

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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Legislative Document

No. 2033

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S.P. 755

In Senate, January 15, 1998

**An Act to Create the Sex Offender Registration and Notification Act of 1998.**

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Submitted by the Department of Public Safety pursuant to Joint Rule 204.  
Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MURRAY of Penobscot.  
Cosponsored by Representative POVICH of Ellsworth and  
Representatives: MUSE of South Portland, WHEELER of Bridgewater.

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

4 Sec. 1. 17-A MRSA §1204, sub-§1-C, as enacted by PL 1995, c.  
680, §6, is amended to read:

6 1-C. The court shall attach as a condition of probation  
8 that the convicted sex offender, as defined under Title 34-A,  
10 section 11103, satisfy all responsibilities set forth in Title  
12 34-A, chapter 13, the Sex Offender Registration and Notification  
14 Act, and that the convicted sex offender, as defined under Title  
34-A, section 11203, subsection 9, satisfy all responsibilities  
set forth in Title 34-A, chapter 15, the Sex Offender  
Registration and Notification Act of 1998.

16 Sec. 2. 34-A MRSA c. 15 is enacted to read:

18 CHAPTER 15

20 SEX OFFENDER REGISTRATION AND NOTIFICATION ACT OF 1998

22 SUBCHAPTER I

24 GENERAL PROVISIONS

26 §11201. Short title

28 This chapter may be known and cited as the "Sex Offender  
30 Registration and Notification Act of 1998." The purpose of this  
32 chapter is to protect the public safety by enhancing access to  
34 and distribution of information concerning sex offenders.

36 §11202. Application

38 This chapter applies to a person declared a sex offender or  
40 a sexually violent predator on or after the effective date of  
42 this chapter.

44 §11203. Definitions

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

50 1. Board. "Board" means the Board of Examiners of Sex  
Offenders.

2. Bureau. "Bureau" means the State Bureau of  
Identification.

3. Domicile. "Domicile" means the place where a person  
lives, resides or dwells.

- 2           4. FBI. "FBI" means the Federal Bureau of Investigation.
- 4           5. Law enforcement agency having jurisdiction. "Law  
6 enforcement agency having jurisdiction" means the chief of police  
8 in the municipality where a sex offender expects to be or is  
10 domiciled. If the municipality does not have a chief of police,  
12 "law enforcement agency having jurisdiction" means the sheriff of  
14 the county where the municipality is located. "Law enforcement  
16 agency having jurisdiction" also means the sheriff of the county  
18 in an unorganized territory.
- 20           6. Mental abnormality. "Mental abnormality" means a  
22 congenital or an acquired condition of a person that affects the  
24 emotional or volitional capacity of that person in a manner that  
26 predisposes that person to commit criminal sexual acts to a  
28 degree that makes the person a menace to the health and safety of  
30 other persons.
- 32           7. Personality disorder. "Personality disorder" means a  
34 persistent pattern of behavior and thought processes that deviate  
36 markedly from the expectations of the person's culture, are  
38 pervasive and inflexible, have an onset in adolescence or early  
40 adulthood, are stable over time and lead to distress or  
42 impairment.
- 44           8. Predatory. "Predatory" means an act directed at a  
46 stranger or a person with whom a relationship has been  
48 established or promoted for the primary purpose of victimization.
9. Sex offender. "Sex offender" means a person who is  
          convicted of an offense set forth in subsection 10 or 11.
10. Sex offense. "Sex offense" means a conviction for one  
          of the following offenses or for an attempt of one of the  
          following offenses, provided the victim was less than 18 years of  
          age at the time of the criminal conduct:
- A. A violation under Title 17, section 2922;
- B. A violation under Title 17-A, section 253; 254; 255;  
          258; 301, unless the actor is a parent of the victim; 302;  
          511; 556; 852, subsection 1, paragraph B; 854 or 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.

2 11. Sexually violent offense. "Sexually violent offense"  
means:

4 A. A conviction or adjudication for or an attempt to commit  
6 an offense under Title 17-A, section 253, subsection 1,  
8 paragraph A; subsection 2, paragraph A, B, C, D, E, F, I or  
J; or section 255, subsection 1, paragraph A, B, D, E, H or  
I; or

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

16 12. Sexually violent predator. "Sexually violent predator"  
18 means a sex offender who has been convicted or adjudicated of a  
20 sexually violent offense and who suffers from a mental  
abnormality or personality disorder that makes the sex offender  
likely to engage in predatory sexual conduct.

22 **SUBCHAPTER II**

24 **SEX OFFENDER REGISTRATION**

26 **§11221. Maintenance of sex offender registry**

28 1. Maintenance of registry. The bureau shall establish and  
30 maintain a registry of persons required to register pursuant to  
this subchapter, the registry must include the following  
32 information on each registrant:

34 A. The sex offender's name, aliases, date of birth, sex,  
race, height, weight, eye color, mailing address, home  
36 address or expected place of domicile;

38 B. A photograph and set of fingerprints;

40 C. A description of the offense for which the sex offender  
was convicted or adjudicated, the date of conviction or  
42 adjudication and the sentence imposed; and

44 D. Any other information the bureau determines important.

46 2. National or regional registry. The bureau is authorized  
to make the registry available to and accept files from a  
48 regional or national registry of sex offenders for the purpose of  
sharing information.

2           3. Registration form. The bureau shall develop a  
3 standardized registration form to be made available to the  
4 appropriate reporting authorities and persons required to  
5 register.

6           4. Verification form. The bureau shall develop and mail  
7 nonforwardable verification forms to the last reported mailing  
8 address of each person required to meet the verification  
9 requirements of this chapter.

10           5. Sexually violent predator subdirectory. The bureau  
11 shall develop and maintain a subdirectory of sexually violent  
12 predators.

13           6. Distribution of information. The bureau shall  
14 distribute information to the department and law enforcement  
15 agencies having jurisdiction as required by this chapter.

16           7. Rules. The bureau may adopt rules pursuant to the Maine  
17 Administrative Procedure Act that are necessary to administer its  
18 responsibilities pursuant to this chapter. Rules adopted  
19 pursuant to this subsection are routine technical rules pursuant  
20 to Title 5, chapter 375, subchapter II-A.

21           §11222. Duty of sex offender to register

22           1. Determination by court. The court shall determine at  
23 the time of conviction or adjudication if a defendant is a sex  
24 offender and whether the board must evaluate the sex offender to  
25 assist the sentencing court in determining whether the sex  
26 offender is a sexually violent predator. A person who the court  
27 determines is a sex offender shall register according to this  
28 subchapter.

29           2. Responsibility of ensuring initial registration. The  
30 department, the county jail or the state mental health institute  
31 that has custody of a sex offender required to register under  
32 this subchapter shall inform the sex offender, prior to discharge  
33 or conditional release, of the duty to register. If no period of  
34 institutional confinement is to be served, the court shall inform  
35 the sex offender at the time of sentencing of the duty to  
36 register. The department, county jail, state mental health  
37 institute or court shall:

38           A. Inform the sex offender of the duty to register and  
39 obtain the information required for the initial registration;

40           B. Inform the sex offender that if that sex offender  
41 changes domicile, the sex offender shall give the new  
42 address to the bureau in writing within 10 days;

2 C. Inform the sex offender that if that sex offender  
4 changes domicile to another state, the sex offender shall  
6 register the new address with the bureau, and if the new  
8 state has a registration requirement the sex offender shall  
register with a designated law enforcement agency in the new  
state not later than 10 days after establishing the domicile  
in the new state;

10 D. Obtain fingerprints and a photograph of the sex  
12 offender, or the court may order the sex offender to submit  
14 to the taking of fingerprints and a photograph at a  
16 specified law enforcement agency within 3 days if the  
fingerprints and photograph have not already been obtained  
in connection with the offense that necessitates  
registration; and

18 E. Enforce the requirement that the sex offender read and  
20 sign a form provided by the bureau that states that the duty  
22 of the sex offender to register under this section has been  
explained.

24 3. Transfer of initial registration information to the  
26 bureau and the FBI. The department, county jail, state mental  
28 health institute or court shall, within 3 days of receipt of the  
30 information described in subsection 2, forward the information to  
32 the bureau. If the court orders the sex offender to submit to  
34 the taking of fingerprints and a photograph at a specified law  
36 enforcement agency, the law enforcement agency shall submit the  
fingerprints and photograph to the bureau within 3 days. The  
bureau shall immediately enter the information into the  
registration system, notify the law enforcement agency having  
jurisdiction where the sex offender expects to be domiciled and  
transmit the information to the FBI for inclusion in the national  
FBI sex offender database.

38 4. Verification. During the period a sex offender is  
40 required to register, the bureau shall verify a sex offender's  
42 domicile on each anniversary of the sex offender's initial  
registration date and shall verify a sexually violent predator's  
domicile every 90 days after that sex offender's initial  
registration date as follows:

44 A. At least 10 days prior to the required verification  
46 date, the bureau shall mail a nonforwardable verification  
48 form to the last reported mailing address of the sex  
offender;

50 B. The verification form must state that the sex offender  
still resides at the address last reported to the bureau;

2           C. The sex offender shall take the completed verification  
3           form and a photograph to the law enforcement agency having  
4           jurisdiction within 10 days of receipt of the form; and

6           D. The law enforcement agency having jurisdiction shall  
7           verify the sex offender's identity, have the sex offender  
8           sign the verification form, take the sex offender's  
9           fingerprints, complete the law enforcement portion of the  
10           verification form and immediately forward the fingerprints,  
11           photograph and form to the bureau.

12           5. Change of domicile. A sex offender shall notify the  
13           bureau in writing of a change of domicile within 10 days after  
14           establishing that domicile.

16           A. If the sex offender establishes a new domicile in the  
17           State, the bureau shall notify, within 3 days, both the law  
18           enforcement agency having jurisdiction where the sex  
19           offender was formerly domiciled and the law enforcement  
20           agency having jurisdiction where the sex offender is  
21           currently domiciled.

24           B. If the sex offender establishes a domicile in another  
25           state, the bureau shall notify, within 3 days, the law  
26           enforcement agency having jurisdiction where the sex  
27           offender was formerly domiciled and the law enforcement  
28           agency having jurisdiction where the sex offender is  
29           currently domiciled.

30           For purposes of registration requirements pursuant to this  
31           subchapter, convictions that result from or are connected with  
32           the same act or result from offenses committed at the same time  
33           are considered as one conviction.

36           §11223. Duty of person establishing domicile to register

38           A person required under another jurisdiction to register as  
39           a sex offender or who is convicted or adjudicated of a similar  
40           sex offense or sexually violent offense in another jurisdiction  
41           shall register as a sex offender within 10 days of establishing  
42           domicile in this State. The person shall contact the bureau, who  
43           shall provide the person with the registration form and direct  
44           the person to take the form and a photograph of the person to the  
45           law enforcement agency having jurisdiction. The law enforcement  
46           agency shall supervise the completion of the form, take the  
47           person's fingerprints and immediately forward the form,  
48           photograph and fingerprints to the bureau.

50           §11224. Duration of registration



2           1. Sex offender. A sex offender shall register for a  
4 period of 10 years from the initial date of registration pursuant  
6 to this chapter, except that a sex offender required to register  
8 because the sex offender established a domicile in this State  
10 subsequent to being declared a sex offender in another state or  
12 under another jurisdiction shall register for a maximum of 10  
14 years from the date when the sex offender was first required to  
16 register in the other state or under another jurisdiction.

18           2. Sexually violent predator. A sexually violent predator  
20 shall register until a court determines that the sexually violent  
22 predator no longer suffers from a mental abnormality or  
24 personality disorder that would make the sex offender likely to  
26 engage in a predatory sexually violent offense. If such a  
28 determination is made prior to 10 years after the date of initial  
30 registration by the sexually violent predator, the sexually  
32 violent predator shall continue to register pursuant to  
34 subsection 1.

### 36 §11225. Board of Examiners of Sex Offenders

38           1. Membership. The board consists of 2 experts, one of  
40 whom must a member of the State Forensic Service, in the field of  
42 behavior and treatment of sex offenders designated by the  
44 Commissioner of Mental Health, Mental Retardation and Substance  
46 Abuse Services.

#### 48           2. Duties of the board. The board shall:

50           A. Develop guidelines, in consultation with the department,  
to assess whether the board should evaluate a sex offender,  
allowing the board to make a recommendation to the court as  
to whether a sex offender is a sexually violent predator.

          B. Evaluate a sex offender, upon order of the sentencing  
court, and provide a report to the court that includes a  
recommendation to assist the court in the determination of  
whether a sex offender is a sexually violent predator.

3. Information relevant to review. Notwithstanding any  
other provision of law, a state correctional facility, county  
jail or state mental health institute shall forward, when  
requested by the board, relevant information pertaining to the  
sex offender to the board for review. Information the board  
requests may include, but not be limited to, the commitment file,  
medical file and treatment file pertaining to the sex offender.  
The sex offender may submit to the board any information relevant  
to the review.

2 4. Report to the sentencing court. The board shall make a  
4 recommendation to the sentencing court as to whether the offender  
6 warrants the designation of sexually violent predator. The  
8 recommendation is confidential and may not be made available for  
10 public inspection.

12 5. Reevaluation. Pursuant to section 12227, a sexually  
14 violent predator may petition the sentencing court for relief  
16 from the designation of sexually violent predator and, upon  
18 request of the court, the board shall provide an updated report  
20 regarding that sexually violent predator.

#### 22 §11226. Judicial determination

24 1. Offender status. After receiving a recommendation from  
26 the board, the sentencing court shall determine if a sex offender  
28 is a sexually violent predator.

30 2. Victim's statement; offender's appearance. In making  
32 the determination of whether a sex offender is a sexually violent  
34 predator, the court shall review any victim's statement and any  
36 material submitted by the sex offender. The sex offender may  
38 appear and be heard by the court and the court shall inform the  
40 sex offender of the right to have counsel appointed, if necessary.

42 3. Bureau notification. Upon a determination that the sex  
44 offender is a sexually violent predator, the court shall notify  
46 the bureau.

#### 48 §11227. Petition for relief

50 1. Petition. A sex offender may be relieved of further  
52 duty to register as a sexually violent predator upon the granting  
54 of a petition for relief by the sentencing court. A sexually  
56 violent predator may file a petition for relief 5 years after the  
58 date the original determination is made by the sentencing court  
60 and every 2 years thereafter.

62 2. Notification to board; report. Upon receipt of the  
64 petition for relief, the court shall notify the board and request  
66 an updated report pertaining to the sex offender.

68 3. Court action. After receiving the report from the  
70 board, the court may grant or deny the relief sought. The court  
72 may consult with the victim prior to making a determination on  
74 the petition. The petition, if granted, may not relieve the  
76 petitioner of the duty to register pursuant to this subchapter as  
78 a sex offender or for any other offense requiring registration.

#### 80 §11228. Violation

2        A sex offender who fails to register or update the  
3 information required under this chapter commits a Class D crime,  
4 except that a violation of this section when the sex offender has  
5 2 or more prior Maine convictions for violations of this chapter  
6 is a Class C crime. For purposes of this section, the dates of  
7 both of the prior convictions must precede the commission of the  
8 offense being enhanced by no more than 10 years, although both  
9 prior convictions may have occurred on the same day. The date of  
10 the conviction is deemed to be the date that sentence is imposed,  
11 even though an appeal was taken. The date of a commission of a  
12 prior offense is presumed to be that stated in the complaint,  
13 information or indictment, notwithstanding the use of the words  
14 "on or about" or the equivalent. It is an affirmative defense  
15 that the failure to register or update information resulted from  
16 just cause.

18                                    **SUBCHAPTER III**

20                                    **NOTIFICATION**

22        **§11251. Notification**

24        The provisions regarding notification in chapter 13,  
25 subchapter III are applicable to a person determined to be a sex  
26 offender pursuant to this chapter.

28        **§11252. Immunity from liability**

30        Neither the failure to perform the requirements of this  
31 chapter nor compliance with this chapter subjects any state,  
32 municipal or county official or employee to liability in a civil  
33 action. The immunity provided under this section applies to the  
34 release of relevant information to other officials or employees  
35 or to the general public.

38                                    **SUMMARY**

40        This bill provides for the registration of sex offenders in  
41 the State in conformance with the federal Jacob Wetterling Act.  
42 The bill does the following.

44        1. It expands the scope of the definition of "sex offender"  
45 for purposes of registration.

46        2. It adds a new category: "sexually violent predator."  
47

48        3. It increases the type of identifying information for sex  
49 offenders that must be kept by the State Bureau of Identification  
50

2 and directs the bureau to forward registration information to the  
Federal Bureau of Investigation for inclusion in the national sex  
offender database.

4

6 4. It sets guidelines for sex offender responsibilities  
regarding registration.

8

10 5. It establishes the Board of Examiners of Sex Offenders,  
which must include a member of the State Forensic Service.

12

6. It creates a penalty for failure to comply with sex  
offender registration requirements.