

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2022

H.P. 1518

House of Representatives, December 26, 2001

An Act to Clarify the Sex Offender Registration and Notification Act of 1999.

(EMERGENCY)

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Received by the Clerk of the House on December 19, 2001. Referred to the Committee on Criminal Justice pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative O'BRIEN of Augusta.
Cosponsored by Representative BERRY of Livermore.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** statutory changes to the Sex Offender Registration
and Notification Act of 1999 are necessary to ensure the
efficient and effective registration of sex offenders and to
8 reduce confusion about the registration requirements; and

10 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
12 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
14 safety; now, therefore,

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

18 **Sec. 1. 34-A MRSA §11203, sub-§4-B** is enacted to read:

20 **4-B. Sentence.** "Sentence," in addition to any punishment
alternatives, includes an involuntary commitment under Title 15,
22 section 103, or similar statute from another jurisdiction,
following a verdict of not criminally responsible by reason of
24 mental disease or defect or similar verdict in another
jurisdiction.

26
28 **Sec. 2. 34-A MRSA §11203, sub-§7, ¶A,** as enacted by PL 1999,
c. 437, §2, is amended to read:

30 A. A conviction for one of the offenses or for an attempt
to commit ~~an offense~~ one of the offenses under Title 17-A,
32 section 253, subsection 1; Title 17-A, section 253,
subsection 2, paragraph A, B, C or D; or Title 17-A, section
34 255, subsection 1, paragraph B, C, D or H; or

36 **Sec. 3. 34-A MRSA §11203, sub-§7, ¶A,** as amended by PL 2001,
c. 383, §154 and affected by §156, is further amended to read:

38 A. A conviction for one of the offenses or for an attempt
40 to commit ~~an offense~~ one of the offenses under Title 17-A,
section 253, subsection 1; Title 17-A, section 253,
42 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

44
46 **Sec. 4. 34-A MRSA §11203, sub-§7, ¶B,** as enacted by PL 1999,
c. 437, §2, is amended to read:

48 B. A conviction for an offense or for an attempt to commit
an offense of the law in another jurisdiction, including,

2 but not limited to, a state, federal, military or tribal
3 court, that includes the essential elements of an offense
4 listed in paragraph A.

6 **Sec. 5. 34-A MRSA §11222, sub-§1-A** is enacted to read:

8 1-A. When duty to register must be exercised. Following
9 determination by the court under subsection 1, a sex offender or
10 a sexually violent predator shall register as follows.

12 A. If the sex offender or sexually violent predator is
13 sentenced to a wholly suspended sentence with probation or
14 to a punishment alternative not involving imprisonment, the
15 duty to register is triggered at the time the person
16 commences an actual execution of the wholly suspended
17 sentence or at the time of sentence imposition when no
18 punishment alternative involving imprisonment is imposed,
19 unless the court orders a stay of execution, in which event
20 the duty is triggered by the termination of the stay.

22 B. If the sex offender or sexually violent predator is
23 sentenced to a straight term of imprisonment or to a split
24 sentence, the duty to register is triggered by discharge or
25 conditional release.

26 C. If the sex offender or sexually violent predator is
27 committed under Title 15, section 103, the duty to register
28 is triggered by discharge or conditional release under Title
29 15, section 104-A.

30 **Sec. 6. 34-A MRSA §11222, sub-§2-A**, as enacted by PL 2001, c.
31 439, Pt. 000, §11, is repealed and the following enacted in its
32 place:

34 2-A. Duty of sex offender or sexually violent predator
35 sentenced from June 30, 1992 to September 17, 1999 to register.
36 Notwithstanding subsection 1, a person who has been sentenced on
37 or after June 30, 1992 but before September 18, 1999 for a sex
38 offense or a sexually violent offense shall register either as a
39 sex offender or as a sexually violent predator, whichever is
40 applicable, with the bureau by September 1, 2002 if the duty to
41 register has been triggered under subsection 1-A, paragraph A, B
42 or C, unless sooner notified in writing of a duty to register
43 under subsection 1-A, paragraph A, B or C by the bureau, the
44 department or a law enforcement officer, in which case the person
45 shall register with the bureau within 10 days of notice.

46 **Sec. 7. 34-A MRSA §11225, sub-§1**, as amended by PL 2001, c.
47 439, Pt. 000, §12, is further amended to read:
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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. A sex
offender ~~or sexually violent predator convicted~~ sentenced from
June 30, 1992 to September 17, 1999 shall register for a period
of 10 years from the date of conviction if the sex offender or
sexually violent predator was not sentenced to a period of
institutional confinement, or for 10 years from the date of
discharge or conditional release if the sex offender or sexually
violent predator was sentenced to a period of institutional
confinement, to be calculated as follows.

18 A. If the sex offender was sentenced to a wholly suspended
20 sentence with probation or to a punishment alternative not
22 involving imprisonment, the 10-year period is treated as
24 having begun at the time the person commenced an actual
26 execution of the wholly suspended sentence or at the time of
sentence imposition when no punishment alternative involving
imprisonment was imposed, unless the court ordered a stay of
execution, in which event the 10-year period is treated as
having begun at the termination of the stay.

28 B. If the sex offender was sentenced to a straight term of
30 imprisonment or to a split sentence, the 10-year period is
32 treated as having begun at the time of discharge or
conditional release.

34 C. If the sex offender was committed under Title 15,
36 section 103, the 10-year period is treated as having begun
at the time of discharge or conditional release under Title
15, section 104-A.

38 D. If the sex offender's duty to register has not yet been
40 triggered, the 10-year period will commence upon
42 registration by the person in compliance with section 11222,
subsection 1-A, paragraphs A, B or C.

44 **Sec. 8. 34-A MRSA §11225, sub-§§2 and 3,** as enacted by PL 1999,
c. 437, §2, are amended to read:

46 **2. Sexually violent predator.** A sexually violent predator
48 sentenced on or after June 30, 1992 shall register for the
duration of the sexually violent predator's life.

3. **Periods of incarceration or civil confinement.**

Notwithstanding subsections 1 and 2, the bureau may suspend the requirement that a sex offender or sexually violent predator register during periods of incarceration or civil confinement.

Sec. 9. 34-A MRSA §11227, as amended by PL 2001, c. 439, Pt. 000, §13, is further amended to read:

§11227. Violation

A sex offender or sexually violent predator who fails to register or update the information required under this chapter commits a Class D crime, except that a violation of this section when the sex offender or sexually violent predator has 2 or more prior convictions in this State for violation of this chapter is a Class C crime. For purposes of this section, 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 deemed 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, except that sex offenders and sexually violent predators ~~convicted~~ sentenced from June 30, 1992 to September 17, 1999 may not raise a defense under just cause that they were not aware of the registration requirement.

Sec. 10. 34-A MRSA §11252, as enacted by PL 1999, c. 437, §2, is amended to read:

§11252. Immunity from liability

Neither the failure to perform the requirements of this chapter nor compliance with this chapter subjects any state, municipal or county official or employee to liability in a civil action. The immunity provided under this section applies, but is not limited to the release of relevant information to other officials or employees or to the general public.

Sec. 11. Effective date. Section 3 of this Act takes effect January 31, 2003.

Emergency clause. In view of the emergency cited in the preamble, sections 1,2 and 4 to 10 of this Act take effect when approved.

SUMMARY

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4 This bill defines "sentence" to include an involuntary
6 commitment under the Maine Revised Statutes, Title 15, section
8 103, or a like statute in another jurisdiction. It clarifies the
10 definition of "sexually violent offense." It clarifies when the
12 duty to register must be carried out by a sex offender or
14 sexually violent predator sentenced on or after September 18,
16 1999. It clarifies when the duty to register must be carried out
18 by a sex offender or sexually violent predator sentenced on or
20 after June 30, 1992, but before September 18, 1999. It amends
22 Title 34-A, section 11225, subsection 1 to delete "sexually
24 violent predator" since that category of offender is not subject
26 to a 10-year registration requirement, being instead subject to
28 lifetime registration under subsection 2. It clarifies how the
10-year registration period for sex offenders is to be calculated
for those sentenced on or after June 30, 1992, but before
September 18, 1999. It clarifies that a sexually violent
predator sentenced on or after June 30, 1992 must register for
the duration of the sexually violent predator's life. It
clarifies that the Department of Public Safety, State Bureau of
Identification may suspend the requirement that a sexually
violent offender register during periods when the person is not
at liberty due to institutional confinement. It amends Title
34-A, section 11227 by replacing the word "convicted" with the
word "sentenced." It clarifies the final sentence of Title 34-A,
section 11252 so that it can not be read to limit immunity under
circumstances not involving the release of information.