

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1157

S.P. 429

In Senate, March 25, 2009

An Act To Improve the Use of Information Regarding Sex Offenders

Reference to the Committee on Criminal Justice and Public Safety 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 GERZOFKY of Cumberland.
Cosponsored by Representative HASKELL of Portland.

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§11201. Short title

This chapter may be known and cited as the "Sex Offender Registration and Notification Act of 1999." The purpose of this chapter is to protect the public from potentially dangerous registrants and offenders by enhancing access to information concerning those registrants and offenders.

Sec. B-2. 34-A MRSA §11202, as repealed and replaced by PL 2005, c. 423, §1, is repealed and the following enacted in its place:

§11202. Application

This chapter applies to:

1. Maine. A person sentenced in this State as an adult, or as a juvenile sentenced as an adult, for a sex offense or a sexually violent offense:

A. On or after June 30, 1992; or

B. On or after January 1, 1982 and prior to June 30, 1992, if that person:

(1) Remained in execution of that sentence on September 1, 1998;

(2) Has more than one conviction in this State for a Class A sex offense or sexually violent offense or more than one conviction in another jurisdiction for an offense that contains the essential elements of a Class A sex offense or sexually violent offense whether or not the convictions occurred on the same date;

(3) At the time of offense, had been previously sentenced in this State as an adult or as a juvenile sentenced as an adult for a sex offense or a sexually violent offense; or

(4) At the time of offense, had been previously sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult for an offense that contains the essential elements of a sex offense or a sexually violent offense; and

2. Other jurisdictions. A person sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult:

A. At any time for an offense that requires registration in the jurisdiction of conviction pursuant to that jurisdiction's sex offender registration laws or that would have required registration had the person remained there;

B. On or after January 1, 1992, for an offense that contains the essential elements of a sex offense or sexually violent offense;

C. On or after January 1, 1982 and prior to June 30, 1992, for an offense that contains the essential elements of a sex offense or sexually violent offense if that person:

(1) Remained in execution of that sentence on September 1, 1998;

(2) Has more than one conviction in this State for a Class A sex offense or sexually violent offense or more than one conviction in another jurisdiction for an

1 offense that contains the essential elements of a Class A sex offense or sexually
2 violent offense whether or not the convictions occurred on the same date;

3 (3) At the time of offense, had been previously sentenced in this State as an adult
4 or as a juvenile sentenced as an adult for a sex offense or a sexually violent
5 offense; or

6 (4) At the time of offense, had been previously sentenced in another jurisdiction
7 as an adult or as a juvenile sentenced as an adult for an offense that contains the
8 essential elements of a sex offense or a sexually violent offense; or

9 D. At any time for a military, tribal or federal offense requiring registration pursuant
10 to:

11 (1) The Jacob Wetterling Crimes Against Children and Sexually Violent
12 Offender Registration Act, also known as the Jacob Wetterling Act, Section
13 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public
14 Law 103-322, as amended; or

15 (2) The Adam Walsh Child Protection and Safety Act of 2006, Public Law
16 109-248.

17 **Sec. B-3. 34-A MRSA §11203, sub-§1-A**, as amended by PL 2005, c. 423, §2, is
18 further amended to read:

19 **1-A. Conditional release.** "Conditional release" means supervised release of a
20 registrant or an offender from institutional confinement for placement on probation,
21 parole, intensive supervision, supervised release for sex offenders, supervised community
22 confinement, home release monitoring or release under Title 15, section 104-A or Title
23 17-A, chapter 54-G.

24 **Sec. B-4. 34-A MRSA §11203, sub-§4**, as amended by PL 2003, c. 711, Pt. C,
25 §9 and affected by Pt. D, §2, is further amended to read:

26 **4. Law enforcement agency having jurisdiction.** "Law enforcement agency
27 having jurisdiction" means the chief of police in the municipality where a registrant or an
28 offender expects to be or is domiciled. If the municipality does not have a chief of police,
29 "law enforcement agency having jurisdiction" means the sheriff of the county where the
30 municipality is located. "Law enforcement agency having jurisdiction" also means the
31 sheriff of the county in an unorganized territory.

32 **Sec. B-5. 34-A MRSA §11203, sub-§4-A**, as amended by PL 2005, c. 423, §3, is
33 further amended to read:

34 **4-A. Risk assessment instrument.** "Risk assessment instrument" means an
35 instrument created and modified as necessary by reviewing and analyzing precursors to a
36 sex offense, victim populations of a registrant or an offender, living conditions and
37 environment of a registrant or an offender and other factors predisposing a person to
38 become a registrant or an offender, for the ongoing purpose of identifying risk factors.

1 **Sec. B-6. 34-A MRSA §11203, sub-§4-D**, as enacted by PL 2003, c. 711, Pt. C,
2 §11 and affected by Pt. D, §2, is amended to read:

3 **4-D. Residence.** "Residence" means that place or those places, other than a
4 domicile, in which a person may spend time living, residing or dwelling. Proof that an
5 offender has lived in the State for 14 days continuously or an aggregate of 30 days within
6 a period of one year gives rise to a permissible inference under the Maine Rules of
7 Evidence, Rule 303 that the person has established a residence for the purposes of
8 registration requirements imposed by this chapter.

9 **Sec. B-7. 34-A MRSA §11203, sub-§4-E** is enacted to read:

10 **4-E. Offender.** "Offender" means a person to whom this chapter applies pursuant to
11 section 11202.

12 **Sec. B-8. 34-A MRSA §11203, sub-§5**, as amended by PL 2003, c. 711, Pt. C,
13 §12 and affected by Pt. D, §2, is further amended to read:

14 **5. Ten-year registrant.** "Ten-year registrant" means a person who is has complied
15 with the initial duty to register under this chapter as an adult convicted and sentenced or a
16 juvenile convicted and sentenced as an adult of a sex offense.

17 **Sec. B-9. 34-A MRSA §11203, sub-§6, ¶B**, as repealed and replaced by PL
18 2003, c. 711, Pt. C, §13 and affected by Pt. D, §2, is amended to read:

19 B. A violation under former Title 17, section 2922; former Title 17, section 2923;
20 former Title 17, section 2924; Title 17-A, section 253, subsection 2, paragraph E, F,
21 G, H, I or J; Title 17-A, section 254; former Title 17-A, section 255, subsection 1,
22 paragraph A, E, F, G, I or J; former Title 17-A, section 255, subsection 1, paragraph
23 B or D if the crime was not elevated a class under former Title 17-A, section 255,
24 subsection 3; Title 17-A, section 255-A, subsection 1, paragraph A, B, C, G, I, J, K,
25 L, M, N, Q, R, S or T; Title 17-A, section 256; Title 17-A, section 258; Title 17-A,
26 section 259; Title 17-A, section 282; Title 17-A, section 283; Title 17-A, section 284;
27 Title 17-A, section 301, subsection 1, paragraph A, subparagraph (3), unless the actor
28 is a parent of the victim; ~~Title 17-A, section 302, unless the actor is a parent of the~~
29 ~~victim~~; Title 17-A, section 511, subsection 1, paragraph D; Title 17-A, section 556;
30 Title 17-A, section 852, subsection 1, paragraph B; or Title 17-A, section 855; or

31 **Sec. B-10. 34-A MRSA §11203, sub-§6, ¶C**, as amended by PL 2005, c. 423,
32 §5, is further amended to read:

33 C. A violation in another jurisdiction that includes the essential elements of an
34 offense listed in paragraph B-; or

35 **Sec. B-11. 34-A MRSA §11203, sub-§6, ¶D** is enacted to read:

36 D. A conviction for a military, tribal or federal offense requiring registration
37 pursuant to:

38 (1) The Jacob Wetterling Crimes Against Children and Sexually Violent
39 Offender Registration Act, also known as the Jacob Wetterling Act, Section

1 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public
2 Law 103-322, as amended; or

3 (2) The Adam Walsh Child Protection and Safety Act of 2006, Public Law
4 109-248.

5 **Sec. B-12. 34-A MRSA §11203, sub-§7**, as amended by PL 2005, c. 423, §6, is
6 further amended to read:

7 **7. Sexually violent offense.** "Sexually violent offense" means:

8 A. A conviction for one of the offenses or for an attempt to commit one of the
9 offenses under former Title 17-A, section 252; under Title 17-A, section 253,
10 subsection 1; Title 17-A, section 253, subsection 2, paragraph A, B, C or D; former
11 Title 17-A, section 255, subsection 1, paragraph C or H; former Title 17-A, section
12 255, subsection 1, paragraph B or D, if the crime was elevated a class under former
13 Title 17-A, section 255, subsection 3; Title 17-A, section 255-A, subsection 1,
14 paragraph D, E, E-1, F, F-1, H, O or P; or

15 B. A conviction for an offense or for an attempt to commit an offense of the law in
16 another jurisdiction that includes the essential elements of an offense listed in
17 paragraph A; or

18 C. A conviction for a military, tribal or federal offense requiring registration
19 pursuant to:

20 (1) The Jacob Wetterling Crimes Against Children and Sexually Violent
21 Offender Registration Act, also known as the Jacob Wetterling Act, Section
22 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public
23 Law 103-322, as amended; or

24 (2) The Adam Walsh Child Protection and Safety Act of 2006, Public Law
25 109-248.

26 **Sec. B-13. 34-A MRSA §11203, sub-§8**, as amended by PL 2005, c. 423, §7, is
27 further amended to read:

28 **8. Lifetime registrant.** "Lifetime registrant" means a person who is has complied
29 with the initial duty to register under this chapter as an adult convicted and sentenced or a
30 juvenile convicted and sentenced as an adult of a:

31 A. Sexually violent offense; or

32 B. Sex offense when the person has a ~~prior~~ another conviction for or an attempt to
33 commit an offense that includes the essential elements of a sex offense or sexually
34 violent offense. For purposes of this paragraph, ~~prior conviction means a conviction~~
35 ~~that occurred at any time. More than one conviction may occur on the same day.~~
36 ~~Multiple convictions that result from or are connected with the same act or that result~~
37 ~~from offenses committed at the same time are considered one conviction unless the~~
38 ~~offenses were committed against more than one victim.~~ "another conviction" means:

1 (1) For persons convicted and sentenced before September 17, 2005, a
2 conviction for an offense for which sentence was imposed prior to the occurrence
3 of the new offense; and

4 (2) For persons convicted and sentenced on or after September 17, 2005, a
5 conviction that occurred at any time. Convictions that occur on the same day
6 may be counted as other offenses for the purposes of classifying a person as a
7 lifetime registrant if:

8 (a) There is more than one victim; or

9 (b) The convictions are for offenses based on different conduct or arising
10 from different criminal episodes.

11 **Sec. B-14. 34-A MRSA §11222**, as amended by PL 2005, c. 683, Pt. B, §28, is
12 further amended to read:

13 **§11222. Duty of offender to register**

14 **1. Notification by court, the department, the bureau or a law enforcement**
15 **agency.** The court shall determine at the time of sentencing if a defendant is a 10-year
16 registrant or lifetime registrant. A person who the court determines is a 10-year registrant
17 or lifetime registrant shall register according to this subchapter. An offender has a duty to
18 register under this chapter after notification has been given to the offender by a court of
19 jurisdiction, the department, the bureau or a law enforcement agency. A court shall
20 notify the offender at the time of sentence of the duty to register pursuant to this chapter.
21 Notification of the duty to register under this chapter also may be given to the offender at
22 any time after the imposition of sentence.

23 At any time, the bureau may correct the term of a registration erroneously assigned to an
24 offender or registrant. In such instances, the bureau shall notify the offender or registrant,
25 the district attorney and court in the jurisdiction where the conviction occurred and the
26 law enforcement agency having jurisdiction where the offender or registrant is domiciled,
27 resides, is employed or attends college or school, if applicable.

28 **1-A. When duty to register must be exercised.** Following determination by the
29 notification by a court, the department, the bureau or a law enforcement agency under
30 subsection 1, a registrant an offender shall register as follows.

31 A. If the registrant offender is sentenced to a wholly suspended sentence with
32 probation or administrative release, or to a punishment alternative not involving
33 imprisonment, the duty to register is triggered at the time the person commences in
34 actual execution of the wholly suspended sentence or at the time of sentence
35 imposition when no punishment alternative involving imprisonment is imposed,
36 unless the court orders a stay of execution, in which event the duty is triggered by the
37 termination of the stay.

38 B. If the registrant offender is sentenced to a straight term of imprisonment or to a
39 split sentence, the duty to register is triggered by discharge or conditional release.

40 C. If the registrant offender is committed under Title 15, section 103, the duty to
41 register is triggered by discharge or conditional release under Title 15, section 104-A.

1 D. If the events stated in paragraphs A to C have passed, an offender must register
2 within 5 days after having received notice of that duty from a court, the department,
3 the bureau or a law enforcement agency.

4 E. Proof that the name and date of birth of the person notified of the duty to register
5 pursuant to this chapter are the same as those of a person who has been convicted of
6 an offense requiring registration pursuant to this chapter gives rise to a permissible
7 inference under the Maine Rules of Evidence, Rule 303 that the person notified of the
8 duty to register is the same person as that person convicted of the offense requiring
9 registration.

10 **1-B. Duty to notify law enforcement agency.** ~~A registrant who has a duty to~~
11 ~~register pursuant to this subchapter~~ An offender shall notify the law enforcement agency
12 having jurisdiction in those areas where the ~~registrant~~ offender is domiciled, resides,
13 works or attends school within 24 hours of becoming a domiciliary or a resident or
14 beginning work or attending school. If the location is a municipality with an organized
15 municipal police department, the law enforcement agency having jurisdiction is the
16 municipal police department. If the location is a school having an organized police
17 department, the law enforcement agency having jurisdiction is the campus police
18 department. If the location is neither a municipality nor a school with an organized police
19 department, the law enforcement agency having jurisdiction is the sheriff's department.

20 **2. Responsibility of ensuring initial registration.** The department, the county jail
21 or the state mental health institute that has custody of a ~~registrant required to register~~
22 ~~under this subchapter~~ an offender shall inform the ~~registrant~~ offender, prior to discharge
23 or conditional release, of the duty to register. If a ~~registrant~~ offender does not serve a
24 period of institutional confinement, the court shall inform the ~~registrant~~ offender at the
25 time of sentencing of the duty to register. The department, county jail, state mental health
26 institute or court shall:

27 A. Inform the ~~registrant~~ offender of the duty to register and obtain the information
28 required for the initial registration;

29 A-1. Inform the ~~registrant~~ offender of the requirement to notify the law enforcement
30 agency having jurisdiction pursuant to subsection 1-B;

31 B. Inform the ~~registrant~~ offender that if the ~~registrant~~ offender changes domicile or
32 changes residence, place of employment or college or school being attended, the
33 ~~registrant~~ offender shall give the new address to the bureau in writing within 5 days
34 and shall notify the law enforcement agency having jurisdiction within 24 hours;

35 C. Inform the ~~registrant~~ offender that if that ~~registrant~~ offender changes domicile to
36 another state, the ~~registrant~~ offender shall register the new address with the bureau
37 and if the new state has a registration requirement, the ~~registrant~~ offender shall
38 register with a designated law enforcement agency in the new state not later than 5
39 days after establishing domicile in the new state;

40 D. Inform the ~~registrant~~ offender that if that ~~registrant~~ offender has part-time or full-
41 time employment in another state, with or without compensation, for more than 14
42 consecutive days or for an aggregate period exceeding 30 days in a calendar year or if
43 that ~~registrant~~ offender enrolls in any type of school in another state on a part-time or

1 full-time basis, the registrant offender shall give the bureau the registrant's offender's
2 place of employment or school to be attended in writing within 5 days after beginning
3 work or attending school and if the other state has a registration requirement, shall
4 register with the designated law enforcement agency in the other state;

5 E. Obtain fingerprints and a photograph of the registrant offender or the court may
6 order the registrant offender to submit to the taking of fingerprints and a photograph
7 at a specified law enforcement agency within 3 days if the fingerprints and
8 photograph have not already been obtained in connection with the offense that
9 necessitates registration; and

10 F. Enforce the requirement that the registrant offender read and sign a form provided
11 by the bureau that states that the duty of the registrant offender to register under this
12 section has been explained.

13 **2-A. Duty of registrant sentenced from June 30, 1992 to September 17, 1999 to**
14 **register.** Notwithstanding subsection 1 and except as provided in subsection 2-B, a
15 person coming within the definition of a 10-year registrant or lifetime registrant who has
16 been sentenced on or after June 30, 1992 but before September 18, 1999 for a sex offense
17 or a sexually violent offense shall register either as a 10-year registrant or lifetime
18 registrant, whichever is applicable, ~~with the bureau by September 1, 2002 if the duty to~~
19 ~~register has been triggered under subsection 1-A, paragraph A, B or C, unless sooner~~
20 ~~notified in writing of a duty to register under subsection 1-A, paragraph A, B or C by the~~
21 ~~bureau, the department or a law enforcement officer, in which case the person and the~~
22 ~~offender has been notified of the duty to register by a court of jurisdiction, the~~
23 ~~department, the bureau or a law enforcement agency. The offender shall register with the~~
24 ~~bureau within 5 days of notice.~~

25 **2-B. Duty to register for new crimes.** For a person otherwise subject to subsection
26 2-A who has been sentenced for a crime added by an amendment to the definition of sex
27 offense or sexually violent offense in section 11203 since September 1, 2002, if the duty
28 to register has been triggered under subsection 1-A, paragraph A, B or C, that and the
29 offender has been notified of the duty to register by a court of jurisdiction, the
30 department, the bureau or a law enforcement agency, that person shall register as a
31 10-year registrant or a lifetime registrant, whichever is applicable, with the bureau by
32 June 1, 2005, unless sooner notified in writing of a duty to register under subsection 1-A,
33 paragraph A, B or C by the bureau, the department or a law enforcement officer, in which
34 case the person, The offender shall register with the bureau within 5 days of notice.

35 **2-C. Duty of registrant sentenced from January 1, 1982 to June 29, 1992 to**
36 **register.** Notwithstanding subsection 1, a person who meets the definition of a 10-year
37 registrant or a lifetime registrant who has been sentenced on or after January 1, 1982 but
38 before June 30, 1992 for a sex offense or a sexually violent offense shall register either as
39 a 10-year registrant or a lifetime registrant, whichever is applicable, ~~with the bureau by~~
40 ~~October 15, 2005 if the duty to register has been triggered under subsection 1-A,~~
41 ~~paragraph A, B or C, unless sooner notified in writing of a duty to register under~~
42 ~~subsection 1-A, paragraph A, B or C by the bureau, the department or a law enforcement~~
43 ~~officer, in which case the person and the offender has been notified of the duty to register~~

1 by a court of jurisdiction, the department, the bureau or a law enforcement agency. The
2 offender shall register with the bureau within 5 days of notice.

3 **3. Transfer of initial registration information to bureau and FBI.** The
4 department, county jail, state mental health institute or court within 3 days of receipt of
5 the information described in subsection 2 shall forward the information to the bureau. If
6 the court orders the registrant offender to submit to the taking of fingerprints and a
7 photograph at a specified law enforcement agency, the law enforcement agency shall
8 submit the fingerprints and photograph to the bureau within 3 days. The bureau shall
9 immediately enter the information into the registration system, notify the law
10 enforcement agencies having jurisdiction where the registrant offender expects to be
11 domiciled and reside and transmit the information to the FBI for inclusion in the national
12 FBI sex offender database.

13 **4. Verification.** During the period a registrant is required to register, the bureau
14 shall require the registrant to verify registration information including domicile,
15 residence, place of employment and college or school being attended. The bureau shall
16 verify the registration information of a 10-year registrant on each anniversary of the
17 10-year registrant's initial registration date and shall verify a lifetime registrant's
18 registration information every 90 days after that lifetime registrant's initial registration
19 date. Verification of the registration information of a 10-year registrant or lifetime
20 registrant occurs as set out in this subsection.

21 A. At least 10 days prior to the required verification date, the bureau shall mail a
22 nonforwardable verification form to the last reported mailing address of the
23 registrant. The verification form is deemed received 3 days after mailing unless
24 returned by postal authorities.

25 C. The registrant shall take the completed verification form and a photograph of the
26 registrant to the law enforcement agency having jurisdiction within 5 days of receipt
27 of the form.

28 D. The law enforcement agency having jurisdiction shall verify the registrant's
29 identity, have the registrant sign the verification form, take the registrant's
30 fingerprints, complete the law enforcement portion of the verification form and
31 immediately forward the fingerprints, photograph and form to the bureau.

32 **5. Change of domicile, residence, place of employment or college or school being**
33 **attended.** A An offender or registrant shall notify the bureau in writing of a change of
34 residence, domicile, place of employment or college or school being attended within 5
35 days and shall notify the law enforcement agency having jurisdiction within 24 hours
36 after changing that domicile, residence, place of employment or college or school being
37 attended.

38 A. If the offender or registrant establishes a new domicile, residence, place of
39 employment or college or school being attended in the State, the bureau shall notify,
40 within 3 days, both the law enforcement agency having jurisdiction where the
41 offender or registrant was formerly domiciled or resided or was employed or enrolled
42 and the law enforcement agency having jurisdiction where the offender or registrant
43 is currently domiciled, residing, employed or enrolled.

1 B. If the offender or registrant establishes a domicile, residence, place of
2 employment or college or school being attended in another state, the bureau shall
3 notify, within 3 days, the law enforcement agency having jurisdiction where the
4 offender or registrant was formerly domiciled or resided or was employed or enrolled
5 and the law enforcement agency having jurisdiction where the offender or registrant
6 is currently domiciled, residing, employed or enrolled.

7 **Sec. B-15. 34-A MRSA §11223**, as amended by PL 2005, c. 423, §19, is further
8 amended to read:

9 **§11223. Duty of person establishing domicile or residence to register**

10 A person sentenced at any time for a military, tribal or federal offense requiring
11 registration pursuant to the Jacob Wetterling Crimes Against Children and Sexually
12 Violent Offender Registration Act, also known as the Jacob Wetterling Act, Section
13 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law
14 103-322, as amended; or the Adam Walsh Child Protection and Safety Act of 2006,
15 Public Law 109-248; or in a jurisdiction other than this State who is required under that
16 jurisdiction to register pursuant to that jurisdiction's sex offender registration statute or
17 would have been required to register if the person had remained in the jurisdiction or, if
18 not so required, who has been sentenced on or after January 1, 1982 for an offense that
19 includes the essential elements of a sex offense or a sexually violent offense shall register
20 as a 10-year registrant or lifetime registrant, whichever is applicable, within 5 days and
21 shall notify the law enforcement agency having jurisdiction within 24 hours of
22 establishing domicile or residence in this State. The person shall contact the bureau,
23 which shall provide the person with the registration form and direct the person to take the
24 form and a photograph of the person to the law enforcement agency having jurisdiction.
25 The law enforcement agency shall supervise the completion of the form, take the person's
26 fingerprints and immediately forward the form, photograph and fingerprints to the
27 bureau.

28 **Sec. B-16. 34-A MRSA §11224, sub-§1**, as enacted by PL 2005, c. 423, §20, is
29 amended to read:

30 **1. Time.** A person who has been sentenced at any time for a military, tribal or
31 federal offense requiring registration pursuant to the Jacob Wetterling Crimes Against
32 Children and Sexually Violent Offender Registration Act, also known as the Jacob
33 Wetterling Act, Section 170101 of the Violent Crime Control and Law Enforcement Act
34 of 1994, Public Law 103-322, as amended; or the Adam Walsh Child Protection and
35 Safety Act of 2006, Public Law 109-248; or in a jurisdiction other than this State and who
36 is required under that jurisdiction to register pursuant to that jurisdiction's sex offender
37 registration statute or would have been required to register if the person had remained in
38 that jurisdiction or, if not so required, who has been sentenced on or after January 1, 1982
39 for an offense that includes the essential elements of a sex offense or a sexually violent
40 offense shall register as a 10-year registrant or lifetime registrant, whichever is
41 applicable, within 5 days and shall notify the law enforcement agency having jurisdiction:

1 A. Within 24 hours of beginning full-time or part-time employment, with or without
2 compensation, for more than 14 consecutive days or for an aggregate period
3 exceeding 30 days in a calendar year in this State; or

4 B. Within 24 hours of beginning college or school on a full-time or part-time basis in
5 this State.

6 **Sec. B-17. 34-A MRSA §11225-A, sub-§6**, as enacted by PL 2005, c. 423, §22,
7 is amended to read:

8 **6. Relief from duty to register.** The following provisions apply to an offender's, a
9 10-year registrant's or a lifetime registrant's duty to register.

10 A. A An offender's or a 10-year registrant's duty to register for a period of 10 years
11 pursuant to subsection 2 is not required if the circumstances triggering the
12 registration requirements under section 11223, section 11224 or both no longer exist.

13 B. A An offender's or a lifetime registrant's duty to register for the duration of that
14 person's life pursuant to subsection 4 is not required if the circumstances triggering
15 the registration requirements under section 11223, section 11224 or both no longer
16 exist.

17 C. If the underlying conviction in this State or in another jurisdiction that triggers the
18 registration requirement is reversed, vacated or set aside, or if the offender or
19 registrant is pardoned for the crime, registration is no longer required.

20 **Sec. B-18. 34-A MRSA §11227, sub-§6**, as repealed and replaced by PL 2005,
21 c. 423, §23, is amended to read:

22 **6. Affirmative defense.** It is an affirmative defense that the failure to comply with a
23 duty imposed under this chapter or a rule adopted pursuant to this chapter resulted from
24 just cause, ~~except that a person to whom section 11222, subsection 2 A, 2 B or 2 C~~
25 ~~applies may not raise a defense under just cause that the person was not aware of the~~
26 ~~registration requirement.~~

27 **Sec. B-19. 34-A MRSA §11227, sub-§7** is enacted to read:

28 **7. Permissible inference.** Proof that the name and date of birth of the person
29 charged with a violation of this section are the same as those of a person who has been
30 convicted of an offense requiring registration pursuant to this chapter gives rise to a
31 permissible inference under the Maine Rules of Evidence, Rule 303 that the person
32 charged with a violation of this section is the same person as that person convicted of the
33 offense requiring registration.

34 **Sec. B-20. 34-A MRSA §11228**, as enacted by PL 2003, c. 371, §12, is amended
35 to read:

36 **§11228. Certification by record custodian**

37 Notwithstanding any other law or rule of evidence, a certificate by the custodian of
38 the records of the bureau, when signed and sworn to by that custodian, or the custodian's

1 designee, is admissible in a judicial or administrative proceeding as prima facie evidence
2 of any fact stated in the certificate or in any documents attached to the certificate.

3 **Sec. B-21. Retroactivity.** This Part applies retroactively to January 1, 1982.

4 SUMMARY

5 Part A of the bill makes the following changes to the Maine Criminal Code.

6 1. It amends the crime of prohibited contact with a minor by repealing the element
7 that the person has a duty to register under the Sex Offender Registration and Notification
8 Act of 1999 and by making the law applicable only to those persons convicted on or after
9 June 30, 1992.

10 2. It repeals from the sentencing provisions the directive that a court order a person
11 convicted of a sex offense or a sexually violent offense to satisfy all requirements of the
12 Sex Offender Registration and Notification Act of 1999. This change clarifies that the
13 Legislature determines that a duty to register exists based on the conviction and that the
14 court's duty is only to notify the person of that duty.

15 3. It repeals from the probation provisions the directive that a court attach as a
16 condition of probation that a person convicted of a sex offense or a sexually violent
17 offense satisfy all requirements of the Sex Offender Registration and Notification Act of
18 1999. The court has discretion to order any condition of probation reasonably related to
19 the rehabilitation of the convicted person or the public safety or security, including
20 satisfying registration requirements if appropriate.

21 Part B of the bill makes the following changes to the Sex Offender Registration and
22 Notification Act of 1999.

23 1. It repeals and replaces the application section to specify that those persons
24 sentenced in Maine as an adult or as a juvenile sentenced as an adult for a sex offense or
25 sexually violent offense on or after January 1, 1982 but before June 30, 1992 must
26 continue to register if they remained in execution of their sentence on September 1, 1998;
27 if they have more than one conviction for a Class A sex offense or Class A sexually
28 violent offense whether or not the convictions were on the same date; if, at the time of
29 offense, they had been previously sentenced in this State as an adult or as a juvenile
30 sentenced as an adult for a sex offense or a sexually violent offense; or if, at the time of
31 offense, they had been previously sentenced in another jurisdiction as an adult or as a
32 juvenile sentenced as an adult for an offense that contains the essential elements of a sex
33 offense or a sexually violent offense. The application section continues to require all
34 persons sentenced on or after June 30, 1992 for a sex offense or a sexually violent offense
35 to comply with the registration requirements.

36 2. It repeals and replaces the application section to specify that those persons
37 sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult on or
38 after January 1, 1982 but before June 30, 1992 must register for an offense that contains
39 the essential elements of a sex offense or sexually violent offense if that person remained
40 in execution of that sentence on September 1, 1998; if that person has more than one

1 conviction for a Class A sex offense or sexually violent offense whether or not the
2 conviction was on the same date; if, at the time of offense, they had been previously
3 sentenced in this State as an adult or as a juvenile sentenced as an adult for a sex offense
4 or a sexually violent offense; or if, at the time of offense, they had been previously
5 sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult for an
6 offense that contains the essential elements of a sex offense or a sexually violent offense.
7 The application section continues to require persons to register for a conviction;
8 regardless of the date, if registration is required in the jurisdiction of conviction pursuant
9 to that jurisdiction's sex offender registration laws or would have been required pursuant
10 to those laws had the person remained there. The statute continues to require registration
11 for those convicted on or after June 30, 1992 for an offense that contains the essential
12 elements of a sex offense or sexually violent offense. The amendment also clarifies that a
13 person must register if the person was sentenced for a specified military, tribal or federal
14 offense.

15 3. It defines the term "offender" as a person to whom the Sex Offender Registration
16 and Notification Act of 1999 applies.

17 4. For purposes of establishing a standard for residence and for establishing that the
18 name and birth date of the person notified of the duty to register are the same as those of
19 a person convicted of an offense requiring registration, it identifies when specified
20 instances of proof give rise to permissible inferences under the Maine Rules of Evidence,
21 Rule 303.

22 5. It amends the definition of "sex offense" by removing criminal restraint and all
23 forms of kidnapping except kidnapping for which the actor knowingly restrains another
24 person with the intent to inflict bodily injury upon the other person or subject the other
25 person to sexual assaults prohibited pursuant to the Maine Revised Statutes, Title 17-A,
26 chapter 11.

27 6. It amends the definition of "lifetime registrant" that pertains to persons classified
28 as lifetime registrants because of having multiple convictions for sex offenses to clarify
29 that the changes made by Public Law 2005, chapter 423 operate prospectively. For
30 persons convicted and sentenced on or after September 17, 2005, the definition remains
31 unchanged except for technical drafting changes. As used in that definition, the term
32 "another conviction" includes a conviction that occurred at any time. Convictions that
33 occur on the same day may be counted as other offenses for the purposes of classifying a
34 person as a lifetime registrant if there is more than one victim or the convictions are for
35 offenses based on different conduct or arising from different criminal episodes. Multiple
36 convictions that result from or are connected with the same act or that result from
37 offenses committed at the same time against one person are considered one conviction.
38 For persons convicted and sentenced before September 17, 2005, the amendment changes
39 the definition of "another conviction" to mean an offense for which sentence was imposed
40 prior to the occurrence of the new offense.

41 7. It clarifies that a duty to register is not triggered by a court determination, but by
42 and upon notification by a court, the Department of Corrections, the State Bureau of
43 Identification or a law enforcement agency that a person has a duty to register under the
44 Sex Offender Registration and Notification Act of 1999. In response to State v. Johnson,

1 2005 ME 46, the amendment also specifies that the State Bureau of Identification may
2 correct the term of a registration erroneously assigned to an offender or registrant, as
3 registration is not part of a criminal sentence. In such instances, the bureau shall notify
4 the offender or registrant, the district attorney and court in the jurisdiction where the
5 conviction occurred and the law enforcement agency having jurisdiction where the
6 offender or registrant is domiciled, resides, is employed or attends college or school, if
7 applicable.

8 8. It clarifies that an affirmative defense provided in the Sex Offender Registration
9 and Notification Act of 1999 may be raised for just cause, which may include that the
10 offender was not aware of the duty to register.

11 9. It clarifies that a certification made by the record custodian also may be made by
12 the record custodian's designee.

13 10. It makes these proposed changes retroactive to January 1, 1982.