

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1995

under the influence of intoxicating liquor or drugs if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence ~~of blood-alcohol level that the person was under the influence of intoxicating liquor or drugs.~~

11. Fatalities. Notwithstanding any other provision of this section, any person hunting wild animals or wild birds who is involved in a hunting accident or any operator of a watercraft, snowmobile or ATV who is involved in a watercraft, snowmobile or ATV accident that results in the death of any person must submit to and complete ~~a test~~ chemical tests to determine that person's blood-alcohol level or other chemical use by analysis of blood ~~or~~ breath or urine. A law enforcement officer may determine which ~~type of test types of tests~~ type of test will be administered. The ~~result of a test~~ results of tests taken pursuant to this subsection ~~is~~ are not admissible at trial unless the court is satisfied that probable cause exists, independent of the test ~~result~~ results, to believe that the hunter or operator was under the influence of intoxicating liquor or drugs or had an excessive blood-alcohol level.

12. Aid in enforcement among municipalities. Except as otherwise prohibited by municipal charter or ordinance, municipalities may, in the manner provided by Title 30-A, section 2674, enter into agreements regarding mutual aid in enforcing laws governing the hunting of wild animals or wild birds while under the influence of intoxicating liquor or drugs or the operation of a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs.

Sec. 14. 12 MRSA §7912, sub-§13 is enacted to read:

13. Reporting; immunity. Immunity from certain criminal and civil liabilities for the act of good faith reporting by certain health care professionals on accidents that the reporting person reasonably believes involved a person who was hunting or operating a snowmobile, ATV or watercraft while under the influence of intoxicating liquor or drugs is set forth in Title 29-A, section 2405.

Sec. 15. 15 MRSA §3103, sub-§1, ¶E, as amended by PL 1989, c. 599, §6, is further amended to read:

E. Offenses involving hunting or the operation or attempted operation of a watercraft, ATV or snowmobile while under the influence of intoxicating liquor or drugs, as defined in Title 12, section 7406, subsection 3; Title 12, section 7801, subsection 9, and; Title 12, section 7827, subsection 9; and Title 12, section 7857, subsection 10, respectively, and offenses involving failing to aid an injured person or to

report a hunting accident as defined in Title 12, section 7406, subsection 15; and

Sec. 16. 29-A MRSA §2405, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

1. Persons who may report. If, while acting in a professional capacity, a medical or osteopathic physician, resident, intern, emergency medical services person, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant or registered or licensed practical nurse knows or has reasonable cause to believe that a person has been operating a motor vehicle, hunting or operating a snowmobile, all-terrain vehicle or watercraft while under the influence of intoxicants and that motor vehicle, snowmobile, all-terrain vehicle or watercraft or a hunter has been involved in an accident, that person may report those facts to a law enforcement official.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 11, 1996.

CHAPTER 680

S.P. 551 - L.D. 1510

An Act to Make Comprehensive Changes to the Sex Offender Laws

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

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

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

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

11 or 13 and shall advise victims of their rights under Title 17-A, section 1173.

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

§6101. Victim involvement in criminal proceedings

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

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

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

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

D. The victim's right to make a statement or submit a written statement at the time of sentencing pursuant to Title 17-A, section ~~4257, 1174~~ upon conviction of the ~~person committing the crime~~ defendant; and

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

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

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

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

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

§15. Warrantless arrests by a law enforcement officer

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

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

(1) Murder;

(2) Any Class A, Class B or Class C crime;

(3) Assault while hunting;

(4) Any offense defined in chapter 45;

(5) Assault, criminal threatening or terrorizing if the officer reasonably believes that the person may cause injury to others unless immediately arrested;

(5-A) Assault or reckless conduct if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 15, section 321;

(6) Theft as defined in section 357, when the value of the services is \$2,000 or less if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(8) Negotiating a worthless instrument if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(9) A violation of a condition of probation when requested by an official of the Division of Probation and Parole;

(10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051, subsection 2; and Title 15, section 1092;

(11) Theft involving a detention under Title 17, section 3521;

(12) Harassment, as set forth in section 506-A;

(13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; Title 19, section 769, subsection 2; and Title 19, section 770, subsection 5; or

(14) A violation of a sex offender registration provision under Title 34-A, chapter 11 or 13; and

B. Any person who has committed or is committing in the officer's presence any Class D or Class E crime.

2. For the purposes of subsection 1, paragraph B, criminal conduct has been committed or is being committed in the presence of a law enforcement officer when one or more of the officer's senses afford that officer personal knowledge of facts that are sufficient to warrant a prudent and cautious law enforcement officer's belief that a Class D or Class E crime is being or has just been committed and that the person arrested has committed or is committing that Class D or Class E crime. An arrest made pursuant to subsection 1, paragraph B must be made at the time of the commission of the criminal conduct, or some part thereof, or within a reasonable time thereafter or upon fresh pursuit.

Sec. 4. 17-A MRSA §1152, sub-§2-C is enacted to read:

2-C. As part of a sentence, the court shall order every natural person who is a convicted sex offender, as defined under Title 34-A, section 11103 to satisfy all requirements set forth in the Sex Offender Registration and Notification Act.

Sec. 5. 17-A MRSA c. 48 is enacted to read:

CHAPTER 48

VICTIMS' RIGHTS

§1171. Definitions

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

1. **Crime.** "Crime" means a criminal offense in which, as defined, there is a victim.

2. **Victim.** "Victim" means:

A. A person who is the victim of a crime; and

B. The immediate family of a victim of a crime if:

(1) The underlying crime is one of domestic violence or sexual assault or one in which the family suffered serious physical trauma or serious financial loss; or

(2) Due to death, age, physical or mental disease, disorder or defect, the victim is unable to participate as allowed under this chapter.

§1172. Victims to be notified

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

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

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

C. The time and place of the trial;

D. The time and place of sentencing; and

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

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

§1173. Plea agreement procedure

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

§1174. Sentencing procedure

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

A. Making an oral statement in open court; or

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

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

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

§1175. Notification of defendant's release

Upon complying with subsection 1, a victim of a crime of murder or of a Class A, Class B or Class C crime for which the defendant is committed to the Department of Corrections or to a county jail, or a victim of a crime of gross sexual assault who had not in fact attained 16 years of age at the time of the crime for which the defendant is found not criminally

responsible by reason of mental disease or defect and is placed in institutional confinement under Title 15, section 103, must receive notice of the defendant's unconditional release and discharge from institutional confinement upon the expiration of the sentence or upon discharge under Title 15, section 104-A and must receive notice of any conditional release of the defendant from institutional confinement, including probation, parole, furlough, work release, intensive supervision, supervised community confinement, home release monitoring or similar program or release under Title 15, section 104-A.

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

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

3. The notice required by this section must contain:

A. The name of the defendant;

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

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

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

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

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

4. The notice requirement under this section ends when:

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

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

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

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

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

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

1. In any case where a defendant has been convicted of any a crime either upon his the defendant's plea or after trial, the prosecutor shall have attorney for the State has the right to be heard at the time of sentence. The prosecutor attorney for the State may recommend a specific sentence or other disposition. The court shall consider any statements made by the attorney for the State, along with all other appropriate factors, in determining the sentence.

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

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

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

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

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

§11001-A. Application

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

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

§11005. Liability

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

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

CHAPTER 13**SEX OFFENDER REGISTRATION AND NOTIFICATION ACT****SUBCHAPTER I****GENERAL PROVISIONS****§11101. Short title**

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

§11102. Application

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

§11103. Definitions

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

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

2. Discharge. "Discharge" means unconditional release and discharge of a sex offender from institu-

tional confinement upon the expiration of a sentence or upon discharge under Title 15, section 104-A.

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

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

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

§11104. Access to records

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

§11105. Liability

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

SUBCHAPTER II**SEX OFFENDER REGISTRATION**

§11121. Registration of sex offenders

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

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

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

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

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

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

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

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

5. Duties of the State Bureau of Identification. Upon receiving notice of a sex offender's conditional release or discharge and the sex offender's address or change in address, the Department of Public Safety,

State Bureau of Identification shall notify all law enforcement agencies having jurisdiction in the municipality where a sex offender registers an address.

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

A. The conviction is vacated;

B. A full and free pardon is granted;

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

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

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

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

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

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

SUBCHAPTER III

NOTIFICATION

§11141. Risk assessment

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

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

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

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

- A. The address where the sex offender will reside;
- B. The address where the sex offender will work, if applicable;
- C. The geographic area to which a sex offender's conditional release is limited, if any; and
- D. The status of the sex offender when released as determined by the risk assessment instrument.

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

§11143. Public notification

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

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

§11144. Risk assessment assistance

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

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

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

1996-97

**CORRECTIONS,
DEPARTMENT OF
Correctional Services**

All Other	\$200,000
Provides for the allocation of funds to provide relapse prevention training and sex offender treatment services to Department of Corrections' clients.	

See title page for effective date.

CHAPTER 681

H.P. 918 - L.D. 1294

An Act to Prohibit Home Repair Fraud

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

Sec. 1. 17-A MRSA §908 is enacted to read:

§908. Home repair fraud

1. A home repair seller is guilty of home repair fraud if that seller knowingly enters into an agreement or contract, written or oral, with any person for home repair services and the seller, at the time of entering into that agreement or contract: