

MAINE STATE LEGISLATURE

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**STATE OF MAINE
117TH LEGISLATURE**

SECOND REGULAR SESSION

**BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
CRIMINAL JUSTICE**

JUNE 1996

MEMBERS:

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Sen. John J. O'Dea

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**ONE HUNDRED SEVENTEENTH LEGISLATURE
SECOND REGULAR SESSION**

***Summary Of Legislation Before The Joint Standing Committees
June 1996***

We are pleased to provide this summary of bills that were considered by the 15 Joint Standing Committees of the Maine Legislature staffed by this office. The document is a compilation of bill summaries which describe each bill, committee amendments and other relevant amendments, as well as the final action taken on the bill. Also included are statistical summaries of bill activity this Session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills handled by the joint standing committees. It is organized alphabetically by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills.

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

<i>CARRIED OVER</i>	<i>Bill carried over to Second Session</i>
<i>CON RES XXX</i>	<i>Chapter # of Constitutional Resolution passed by both Houses</i>
<i>CONF CMTE UNABLE TO AGREE</i>	<i>Committee of Conference unable to agree; bill died</i>
<i>DIED BETWEEN BODIES</i>	<i>House & Senate disagree; bill died</i>
<i>DIED ON ADJOURNMENT</i>	<i>Action incomplete when session ended; bill died</i>
<i>EMERGENCY</i>	<i>Enacted law takes effect sooner than 90 days</i>
<i>FAILED EMERGENCY ENACTMENT</i>	<i>Emergency bill failed to get 2/3 vote</i>
<i>FAILED ENACTMENT</i>	<i>Bill failed to get majority vote</i>
<i>FAILED MANDATE ENACTMENT</i>	<i>Bill imposing local mandate failed to get 2/3 vote</i>
<i>INDEF PP</i>	<i>Bill Indefinitely Postponed</i>
<i>ONTP</i>	<i>Ought Not To Pass report accepted</i>
<i>P&S XXX</i>	<i>Chapter # of enacted Private & Special Law</i>
<i>PUBLIC XXX</i>	<i>Chapter # of enacted Public Law</i>
<i>RESOLVE XXX</i>	<i>Chapter # of finally passed Resolve</i>
<i>UNSIGNED</i>	<i>Not signed by Governor within 10 days</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's Veto</i>

Please note the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is July 4, 1996.

The amendment proposed to provide that possession of cocaine in the form of cocaine base constitutes a Class C crime when the State proves that the offender has a prior scheduled drug conviction.

The amendment proposed to provide that possession of 4 grams or more of cocaine in the form of cocaine base is a Class B crime.

The amendment also proposed to add a fiscal note to the bill.

Committee Amendment "B" (H-697) was the Minority Report of the Joint Standing Committee on Criminal Justice. The amendment proposed to retain provisions of the original bill that made possession of cocaine base a Class C crime and proposed to add provisions that define and distinguish cocaine in the form of cocaine base (crack cocaine) from cocaine hydrochloride (powder cocaine). The amendment also proposed to create presumptive quantities for furnishing and trafficking in cocaine base as in Committee Amendment "A" (H-696).

This amendment also proposed to add a fiscal note to the bill.

(Not adopted)

Enacted law summary

Public Law 1995, chapter 635 makes possession of cocaine base a Class D crime and defines and distinguishes cocaine in the form of cocaine base (crack cocaine) from cocaine hydrochloride (powder cocaine).

Public Law 1995, chapter 635 creates presumptive quantities for furnishing and trafficking in cocaine base.

Public Law 1995, chapter 635 provides that a person is guilty of aggravated trafficking or furnishing scheduled drugs if the person trafficks in or furnishes cocaine in the form of cocaine base in a quantity of 32 grams or more.

Public Law 1995, chapter 635 provides that possession of cocaine in the form of cocaine base constitutes a Class C crime when the State proves that the offender has a prior scheduled drug conviction. Possession of cocaine in the form of cocaine base would continue to be a Class D crime when the State does not prove that the offender has a prior scheduled drug conviction.

Public Law 1995, chapter 635 also provides that possession of 4 grams or more of cocaine in the form of cocaine base is a Class B crime.

LD 1510

An Act to Make Comprehensive Changes to the Sex Offender Laws

PUBLIC 680

Sponsor(s)
PINGREE

Committee Report
OTP-AM

Amendments Adopted
S-516

LD 1510 was carried over from the First Regular Session of the 117th Legislature. LD 1510 proposed to make comprehensive changes to the laws involving sex offenders. The bill proposed to:

1. Require all judges and justices to attend a conference on sexual abuse;
2. Change the statute of limitations for civil actions involving sexual acts toward minors to allow actions to be brought up to 5 years after the victim reaches the age of majority;
3. Require all trials in which the defendant is accused of a sex offense against a minor be conducted in a speedy fashion;
4. Require the court to sentence a person convicted of a 2nd sex offense to the maximum term allowed under the law. Prior to early release, the sex offender would be required to participate in and successfully complete a treatment program for sex offenders administered by the Department of Corrections. The court would also have authority to order the garnishment of up to 50% of an offender's wages to pay for the counseling of the victim;
5. Require the court, in an action involving sexual abuse by a person against a minor who is a resident of the same household, to order the defendant to vacate the household. The court would not be authorized to remove the child from the household unless it finds that the child is in danger;
6. Repeal the Sex Offender Registration Act and reenact it making the following changes:
 - A. Expand the application of the Act to apply to persons convicted of a broader range of sex offenses;
 - B. Require a sex offender to report any change of address and to register with the sheriff of the county in which the sex offender plans to reside;
 - C. Require the sheriff to report all information received from a sex offender to a central registry maintained by the Department of Public Safety;
 - D. Establish a schedule for duration of registration based upon the class of the crime; and
 - E. Establish penalties for failure to register;
7. Direct the Department of Education and the Department of Public Safety to develop and implement a program of education and prevention of sex abuse for use in elementary and middle schools; and
8. Require the Department of Corrections to develop and administer a program for the treatment and counseling of inmates convicted of sex offenses. The department would also have been directed to study alternative sentencing options for persons convicted of sex offenses and to report its findings and recommendations back to the Legislature.

Committee Amendment "A" (S-516) proposed to replace the bill and to do the following:

1. Clarify the rights of victims to participate in the criminal justice process and create a victims' rights chapter in the Maine Criminal Code;
2. State that neither the failure of law enforcement to perform the requirements of the victims' rights chapter nor compliance with the victims' rights chapter gives rise to civil liability;
3. Specify that a law enforcement officer may arrest without a warrant a person who the officer has probable cause to believe has violated or is in violation of the sex offender registration requirements as established in the Maine Revised Statutes, Title 34-A, chapters 11 or 13;

4. Direct the court at sentencing to order every 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;
5. Clarify that, upon request, the Department of Corrections shall notify victims of the conditional release or discharge of defendants convicted of murder or of a Class A, Class B or Class C crime who are committed to the department's custody. The amendment proposed to require county jails to give the same notice to victims when a defendant convicted of murder or a Class A, Class B or Class C crime who is committed to a county jail is conditionally released or discharged. The amendment also proposed to require state mental health institutes to give notice of a defendant's release to victims when a defendant, who is committed to an institute's custody, has been found not criminally responsible by reason of mental disease or defect for gross sexual assault and the victim had not in fact attained 16 years of age at the time of the crime;
6. Direct the court to attach as a condition of probation that a convicted sex offender, as defined under Title 34-A, section 11103, satisfy all requirements set forth in the Sex Offender Registration and Notification Act;
7. Add an application section to the existing Sex Offender Registration Act, Title 34-A, chapter 11, that specifies that chapter 11 applies to sex offenders sentenced on or after June 30, 1992 and before September 1, 1996;
8. Enact Title 34-A, chapter 13, the Sex Offender Registration and Notification Act to apply to sex offenders sentenced or placed in institutional confinement on or after September 1, 1996. The purpose of this Act is to protect the public safety by enhancing access to information concerning sex offenders by requiring registration by the offender and notification to victims and law enforcement agencies;
9. Allocate \$200,000 to the Department of Corrections from the Federal Expenditure Fund for the fiscal year ending June 30, 1997. The federal funds will be used to train probation officers and to otherwise carry out the purposes of this Act;
10. Direct the Department of Corrections to report back to the joint standing committee having jurisdiction over criminal justice matters 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, no later than January 1, 1998; and
11. Add a mandate preamble, 2 application sections, an allocation section, an effective date and a fiscal note.

Enacted law summary

Public Law 1995, chapter 680 does the following:

1. Clarifies the rights of victims to participate in the criminal justice process and creates a victims' rights chapter in the Maine Criminal Code;
2. States that neither the failure of law enforcement to perform the requirements of the victims' rights chapter nor compliance with the victims' rights chapter gives rise to civil liability;
3. Specifies that a law enforcement officer may arrest without a warrant a person who the officer has probable cause to believe has violated or is in violation of the sex offender registration requirements in the Maine Revised Statutes, Title 34-A, chapters 11 or 13;

4. Directs the court at sentencing to order every 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;
5. Clarifies that, upon request, the Department of Corrections shall notify victims of the conditional release or discharge of defendants convicted of murder or of a Class A, Class B or Class C crime who are committed to the department's custody. The amendment requires county jails to give the same notice to victims when a defendant convicted of murder or a Class A, Class B or Class C crime who is committed to a county jail is conditionally released or discharged. The amendment also requires state mental health institutes to give notice of a defendant's release to victims when a defendant, who is committed to an institute's custody, has been found not criminally responsible by reason of mental disease or defect for gross sexual assault and the victim had not in fact attained 16 years of age at the time of the crime;
6. Directs the court to attach as a condition of probation that a convicted sex offender, as defined under Title 34-A, section 11103, satisfy all requirements set forth in the Sex Offender Registration and Notification Act;
7. Adds an application section to the existing Sex Offender Registration Act, Title 34-A, chapter 11 that specifies that chapter 11 applies to sex offenders sentenced on or after June 30, 1992 and before September 1, 1996;
8. Enacts Title 34-A, chapter 13, the Sex Offender Registration and Notification Act. The Act applies to sex offenders sentenced or placed in institutional confinement under Title 15, section 103, on or after September 1, 1996. The purpose of this Act is to protect the public safety by enhancing access to information concerning sex offenders. The Act does the following:
 - A. Defines "risk assessment instrument," which the Department of Corrections shall use for the ongoing purpose of identifying risk factors predisposing a person to become a sex offender or a repeat sex offender. This information will be 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;
 - B. Defines "sex offender" as a person who is 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;
 - C. States that neither the failure of law enforcement to perform the requirements of this chapter nor compliance with this chapter gives rise to civil liability;
 - D. Explains the process for registering as a sex offender and increases the penalty for failure to register or update information as required; and
 - E. Explains the process for notification when a sex offender is conditionally released or discharged from institutional confinement as follows:
 - (1) The Department of Corrections shall give the Department of Public Safety, State Bureau of Identification notice of the address where the sex offender will reside; the address where the sex offender will work, if applicable; the geographic area to which a sex offender's conditional release is limited, if any; and the status of the sex offender when released as determined by the risk assessment instrument;

(2) The Department of Public Safety, State Bureau of Identification shall forward the information in subparagraph (1) to all law enforcement agencies that have jurisdiction in those areas where the sex offender may reside or work;

(3) The Department of Corrections shall notify members of the public who the department determines appropriate to ensure public safety; and

(4) The law enforcement agencies that receive information concerning the registration of a sex offender shall notify members of that municipality who the law enforcement agency determines appropriate to ensure public safety.

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

This notification process is not intended to affect or limit the current ability of a member of the public to call the Department of Public Safety, State Bureau of Identification to inquire whether a person is a registered sex offender. The notification process is instead a method of enhancing public notification for the purpose of public safety;

9. Allocates \$200,000 to the Department of Corrections from the Federal Expenditure Fund for the fiscal year ending June 30, 1997. The federal funds will be used to train probation officers and to otherwise carry out the purposes of this Act; and

10. Directs the Department of Corrections to report back to the joint standing committee having jurisdiction over criminal justice matters 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, no later than January 1, 1998.

LD 1661 An Act to Increase the Penalty for Criminal Restraint of a Young Child

PUBLIC 689

Sponsor(s)
PEAVEY
SMALL

Committee Report
OTP-AM

Amendments Adopted
H-700

LD 1661 proposed to change the penalty for criminal restraint of a child under age 6 or a dependent person from a Class D crime to a Class C crime. The increase in penalty would allow law enforcement officers to arrest the offender rather than issue a summons.

LD 1661 was originally titled "An Act to Increase the Penalty for Criminal Restraint of a Young Child or a Dependent Person."

Committee Amendment "A" (H-700) proposed to change from a Class D to a Class C crime criminal restraint of a child under 8 years of age. The amendment proposed to modify the title of the bill to reflect the intent of the amendment. The amendment also proposed to add a fiscal note.