

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
123RD LEGISLATURE
SECOND REGULAR AND FIRST SPECIAL SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed
during the Second Regular or First Special Sessions of the 123rd Maine
Legislature coming from the

**JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE
AND PUBLIC SAFETY**

May 2008

STAFF:

MARION HYLAN BARR, LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670

MEMBERS:

SEN. BILL DIAMOND, CHAIR
SEN. EARLE L. MCCORMICK
SEN. ROGER L. SHERMAN

REP. STAN GERZOFSKY, CHAIR
REP. PATRICIA A. BLANCHETTE
REP. ANNE M. HASKELL
REP. STEPHEN P. HANLEY
REP. DAWN HILL
REP. BRYAN T. KAENRATH
REP. RICHARD M. SYKES
REP. CHRISTIAN D. GREELEY
REP. GARY E. PLUMMER
REP. JOSEPH L. TIBBETTS

STATE OF MAINE
123RD LEGISLATURE
SECOND REGULAR & FIRST SPECIAL SESSIONS



**LEGISLATIVE DIGEST OF BILL SUMMARIES AND
ENACTED LAWS**

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all bills and adopted amendments and all laws enacted or finally passed during the Second Regular or First Special Sessions of the 123rd Maine Legislature.

The *Digest* is arranged alphabetically by committee, and within each committee by LD number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

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>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 IN CONCURRENCE</i>	<i>One body accepts ONTP report; the other indefinitely postpones the bill</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/FINAL PASSAGE</i>	<i>Emergency bill failed to get 2/3 vote</i>
<i>FAILED ENACTMENT/FINAL PASSAGE</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>NOT PROPERLY BEFORE THE BODY</i>	<i>Ruled out of order by the presiding officers; bill died</i>
<i>INDEF PP</i>	<i>Bill Indefinitely Postponed; bill died</i>
<i>ONTP (or Accepted ONTP report)</i>	<i>Ought Not To Pass report accepted; bill died</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>Bill held by Governor</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's Veto</i>

The effective date for non-emergency legislation enacted in the Second Regular Session (R2) is June 30, 2008. The effective date for non-emergency legislation enacted in the First Special Session (S1) is July 18, 2008.¹ The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills. Any bill summarized in this document having an LD number less than 1932 was a bill carried over from the First Regular Session of the 123rd Legislature.

¹ The session in which each law was enacted or finally passed (R2 or S1) is included in Appendix C.

Joint Standing Committee on Criminal Justice and Public Safety

years for an aggravated trafficking offense that the current law provides, a person convicted under this new provision of manufacturing at a residence with children would be subject to a minimum 10 years of imprisonment.

Committee Amendment "A" (H-124)

This amendment establishes as an aggravating factor in the offense of "trafficking or attempting to traffick in a scheduled drug" manufacturing or an attempt to manufacture methamphetamine, 3, 4 - methylenedioxyamphetamine, 3, 4 - methylenedioxy amphetamine, lysergic acid diethylamide or fentanyl. This makes this offense a Class A crime, which is subject to the current minimum mandatory sentencing alternative of 4 years imprisonment for certain Class A drug offenses. Making the manufacturing of these drugs a Class A crime replaces the provision in the bill that would have made trafficking or attempting to traffick in a schedule W drug at a residence at which a child less than 18 years of age resides and the basis of the offense is manufacturing or an attempt to manufacture a Class A crime subject to a mandatory minimum sentence of 10 years imprisonment.

LD 446 An Act To Improve the Use of Information Regarding Sex Offenders to Better Ensure Public Safety and Awareness

HELD BY GOVERNOR

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DIAMOND	OTP-AM MAJ OTP-AM MIN	S-594 S-669 ROTUNDO

This bill is a concept draft pursuant to Joint Rule 208.

This bill proposes that the Joint Standing Committee on Criminal Justice do the following:

1. Review compliance and enforcement of sex offender registration laws and identify resources and methods to ensure that all persons required to register do register, verify and update their information as directed;
2. Using other states models for tiered risk assessment and other examples of sex offender classification to learn from, create and adopt a system of classification based on risk to be applied to each person required to register under the Sex Offender Registration and Notification Act of 1999 in order to classify sex offenders based on their risk of reoffending and the degree of likelihood that they pose a danger to the community;
3. Create and adopt processes to apply the risk assessment and evaluate its use so that due process concerns are met and each risk assessment analysis provides useful information to those in the criminal justice system and others who receive that information;
4. Educate and support law enforcement so that they can use the sex offender risk assessment information to best inform the public and better ensure public safety; and
5. Review the current list of registerable sex offenses and determine if changes to the current Maine sex offender registry and to the Maine sex offender registry website should be made.

LD 446 was carried over by joint order, H.P. 1369.

Committee Amendment "A" (S-594)

This amendment replaces the bill and is the majority report of the Joint Standing Committee on Criminal Justice and Public Safety.

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

Joint Standing Committee on Criminal Justice and Public Safety

1. It amends the crime of prohibited contact with a minor by repealing the element that the person has a duty to register under the Sex Offender Registration and Notification Act of 1999 and by making the law applicable only to those persons convicted on or after June 30, 1992.
2. It repeals from the sentencing provisions the directive that a court order a person convicted of a sex offense or a sexually violent offense to satisfy all requirements of the Sex Offender Registration and Notification Act of 1999. This change clarifies that the Legislature determines that a duty to register exists based on the conviction and that the court's duty is only to notify the person of that duty.
3. It repeals from the probation provisions the directive that a court attach as a condition of probation that a person convicted of a sex offense or a sexually violent offense satisfy all requirements of the Sex Offender Registration and Notification Act of 1999. The court has discretion to order any condition of probation reasonably related to the rehabilitation of the convicted person or the public safety or security, including satisfying registration requirements if appropriate.

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

1. It repeals and replaces the application section to specify that those persons sentenced in Maine as an adult or as a juvenile sentenced as an adult for a sex offense or sexually violent offense on or after January 1, 1982 but before June 30, 1992 must continue to register if they remained in execution of their sentence on September 1, 1998; if they have more than one conviction for a Class A sex offense or Class A sexually violent offense whether or not the convictions were on the same date; if, at the time of offense, they 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 if, at the time of offense, they 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. The application section continues to require all persons sentenced on or after June 30, 1992 for a sex offense or a sexually violent offense to comply with the registration requirements.
2. It repeals and replaces the application section to specify that those persons sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult on or after January 1, 1982 but before June 30, 1992 must register for an offense that contains the essential elements of a sex offense or sexually violent offense if that person remained in execution of that sentence on September 1, 1998; if that person has more than one conviction for a Class A sex offense or sexually violent offense whether or not the conviction was on the same date; if, at the time of offense, they 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 if, at the time of offense, they 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. The application section continues to require persons to register for a conviction, regardless of the date, if registration is required in the jurisdiction of conviction pursuant to that jurisdiction's sex offender registration laws or would have been required pursuant to those laws had the person remained there. The statute continues to require registration for those convicted on or after June 30, 1992 for an offense that contains the essential elements of a sex offense or sexually violent offense. The amendment also clarifies that a person must register if the person was sentenced for a specified military, tribal or federal offense.
3. It defines the term "offender" as a person to whom the Sex Offender Registration and Notification Act of 1999 applies.
4. For purposes of establishing a standard for residence and for establishing that the name and birth of the person notified of the duty to register are the same as those of a person convicted of an offense requiring registration, it identifies when specified instances of proof give rise to permissible inferences under the Maine Rules of Evidence, Rule 303.

Joint Standing Committee on Criminal Justice and Public Safety

5. It amends the definition of "sex offense" by removing criminal restraint and all forms of kidnapping except kidnapping for which the actor knowingly restrains another person with the intent to inflict bodily injury upon the other person or subject the other person to sexual assaults prohibited pursuant to Title 17-A, chapter 11.
6. It amends the definition of "lifetime registrant" that pertains to persons classified as lifetime registrants because of having multiple convictions for sex offenses to clarify that the changes made by Public Law 2005, chapter 423 operate prospectively. For persons convicted and sentenced on or after September 17, 2005, the definition remains unchanged except for technical drafting changes. As used in that definition, the term "another conviction" includes a conviction that occurred at any time. Convictions that occur on the same day may be counted as other offenses for the purposes of classifying a person as a lifetime registrant if there is more than one victim or the convictions are for offenses based on different conduct or arising from different criminal episodes. Multiple convictions that result from or are connected with the same act or that result from offenses committed at the same time against one person are considered one conviction. For persons convicted and sentenced before September 17, 2005, the amendment changes the definition of "another conviction" to mean an offense for which sentence was imposed prior to the occurrence of the new offense.
7. It clarifies that a duty to register is not triggered by a court determination, but by and upon notification by a court, the Department of Corrections, the State Bureau of Identification or a law enforcement agency that a person has a duty to register under the Sex Offender Registration and Notification Act of 1999. In response to *State v. Johnson*, 2005 ME 46, the amendment also specifies that the State Bureau of Identification may correct the term of a registration erroneously assigned to an offender or registrant, as registration is not part of a criminal sentence. In such instances, the bureau shall notify the offender or registrant, the district attorney and court in the jurisdiction where the conviction occurred and the law enforcement agency having jurisdiction where the offender or registrant is domiciled, resides, is employed or attends college or school, if applicable.
8. It clarifies that an affirmative defense provided in the Sex Offender Registration and Notification Act of 1999 may be raised for just cause, which may include that the offender was not aware of the duty to register.
9. It clarifies that a certification made by the record custodian also may be made by the record custodian's designee.
10. It makes these proposed changes retroactive to January 1, 1982.

Part C adds a one-time appropriation for technology services.

Committee Amendment "B" (S-595)

This amendment replaces the bill and is the minority report of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment makes the same changes to the Maine Criminal Code in Part A as the majority report, except that it also amends the Maine Revised Statutes, Title 17-A, section 261 to specify that the law applies to persons who were convicted on or after January 1, 1982 of a Class B, C, D or E offense and without restriction as to time of conviction for persons convicted of a Class A offense.

Part B of this amendment also makes many of the same changes to the Sex Offender Registration and Notification Act of 1999 as the majority report, except for the following. Instead of removing registrants from the sex offender registry altogether, the amendment removes those persons identified in the majority report who would be eligible for removal from the registry and maintains those registrants' information in a manner that may be accessed only by law enforcement. The amendment prohibits the State Bureau of Identification from posting the names of these registrants on the Internet and from providing specific registration information about these registrants upon receiving a written request from a member of the public. Specifically, this means that notwithstanding Title 34-A, section 11221, subsection 9, paragraph A the State Bureau of Identification may not post a registrant's information on the Internet for public inspection and, notwithstanding subsection 9, paragraph B, the bureau may not provide a registrant's information upon receiving a written request for a registrant unless that registrant is sentenced in this

Joint Standing Committee on Criminal Justice and Public Safety

State as an adult or as a juvenile sentenced as an adult for a sex offense or a sexually violent offense on or after June 30, 1992; on or after January 1, 1982 and prior to June 30, 1992, if that person remained in execution of that sentence on September 1, 1998 or 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 and at the time of offense, the person 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 and at the time of offense, the person 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 or unless the registrant is sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult 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; on or after June 30, 1992 for an offense that contains the essential elements of a sex offense or sexually violent offense; 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 remained in execution of that sentence on September 1, 1998, 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 Class A sexually violent offense whether or not the convictions occurred on the same date, 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 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; or at any time for a military, tribal or federal offense requiring registration.

Part C of this amendment also adds an appropriations and allocations section.

This amendment was not adopted.

Senate Amendment "A" (S-669)

This amendment removes the appropriations and allocations section.

LD 856 An Act To Reduce Drunk Driving

PUBLIC 531

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BROMLEY	OTP-AM	S-446

This bill allows the Secretary of State to reinstate the license of a person convicted of more than one violation of the operating under the influence laws if the person installs an approved ignition interlock device. An ignition interlock device is a device that connects a breath analyzer to a motor vehicle's ignition system. The analyzer monitors the concentration of alcohol in the breath of any person who attempts to start the motor vehicle by using the ignition system. The device prevents the vehicle from starting unless the person provides a breath sample with a concentration of alcohol that is below a preset level.

This bill was carried over by joint order, H.P. 1369.

Committee Amendment "A" (S-446)

This amendment replaces the bill. The amendment increases license suspension periods for OUI offenses. The amendment allows the Secretary of State to reinstate the license of a person with 2 OUI offenses after 9 months of the 3-year suspension period has run if the person installs an ignition interlock device on the motor vehicle the person operates for a period of 2 years and the person also satisfies all other requirements for license reinstatement imposed by the Secretary of State. The amendment also allows the Secretary of State to reinstate the license of a