

MAINE STATE LEGISLATURE

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STATE OF MAINE
124TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed during the First Regular Session of the 124th Maine Legislature coming from the

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

July 2009

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STATE OF MAINE

124TH LEGISLATURE
FIRST REGULAR SESSION



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 First Regular Session of the 124th 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:

CARRIED OVER.....	Carried over to a subsequent session of the Legislature
CON RES XXX.....	Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE.....	Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES.....	House & Senate disagree; bill died
DIED IN CONCURRENCE.....	One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT.....	Action incomplete when session ended; bill died
EMERGENCY.....	Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE.....	Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE.....	Bill failed to get majority vote
FAILED MANDATE ENACTMENT.....	Bill imposing local mandate failed to get 2/3 vote
NOT PROPERLY BEFORE THE BODY.....	Ruled out of order by the presiding officers; bill died
INDEF PP.....	Bill Indefinitely Postponed; bill died
ONTP (or Accepted ONTP report).....	Ought Not To Pass report accepted; bill died
P&S XXX.....	Chapter # of enacted Private & Special Law
PUBLIC XXX.....	Chapter # of enacted Public Law
RESOLVE XXX.....	Chapter # of finally passed Resolve
UNSIGNED.....	Bill held by Governor
VETO SUSTAINED.....	Legislature failed to override Governor's Veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 124th Legislature is September 12, 2009. The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills.

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Resolve 2009, chapter 53 directs the Department of Public Safety to assist private sellers of firearms by providing information about how to collect appropriate information about the purchasers of firearms and how to obtain criminal history record checks on those purchasers. In this effort, the Department of Public Safety shall invite the United States Attorney for the District of Maine and the Sportsman's Alliance of Maine to collaborate in order to educate the public and private sellers and encourage access to the United States Department of Justice's Project Safe Neighborhoods website where private sellers can obtain a gun seller's tool kit. The department shall also invite the United States Attorney for the District of Maine and the Sportsman's Alliance of Maine to assist it in contacting Maine's federally licensed firearms dealers and compiling a list of those dealers who are willing to perform criminal history record checks of buyers purchasing firearms from private sellers. The department shall post that list on its website and shall invite both the United States Attorney for the District of Maine and the Sportsman's Alliance of Maine to include the list on their existing websites and shall publicize the information to educate the public. The department shall report its progress to the Joint Standing Committee on Criminal Justice and Public Safety by February 1, 2010.

LD 1139 An Act To Require Internet Service Providers To Retain Records

Carried Over

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HASKELL DIAMOND		

This bill requires that Internet service providers retain customer records for at least 180 days and directs the Attorney General to adopt routine technical rules governing the retention of those records. Failure to comply with the retention requirements is a civil violation for which a fine of up to \$10,000 per violation may be adjudged.

LD 1139 was carried over to any special or regular session of the 124th Legislature by joint order, House Paper 1053.

LD 1157 An Act To Improve the Use of Information Regarding Sex Offenders

PUBLIC 365

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
GERZOFSKY	OTP-AM	S-264

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

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

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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 bill 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 date 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.

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 the Maine Revised Statutes, 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

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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.

Committee Amendment "A" (S-264)

This amendment creates an exception to the application provision of the Sex Offender Registration and Notification Act of 1999. The amendment specifies that a person sentenced on or after January 1, 1982 and prior to June 30, 1992 is not required to register if that person submits to the Department of Public Safety, State Bureau of Identification, in a form to be determined by the bureau, documentation to establish the following: the person was finally discharged from the correctional system prior to September 1, 1998; the person's convictions do not include more than one 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; at the time of the offense, the person had not 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; at the time of the offense, the person had not 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; subsequent to the commission of the offense, the person has not been convicted of a crime under the Maine Revised Statutes, Title 17 or Title 17-A in this State that is punishable by imprisonment for a term of one year or more; and, subsequent to the commission of the offense, the person has not been convicted under the laws of any other jurisdiction of a crime that is punishable by a term of imprisonment exceeding one year. This requirement does not include a crime under the laws of another jurisdiction that is classified by the laws of that jurisdiction as a misdemeanor and is punishable by a term of imprisonment of 2 years or less.

The amendment specifies that a person's duty to register continues until the bureau determines that documentation meets the requirements and any rules adopted by the bureau, and a person who submits documentation is responsible for the costs of any criminal history record checks required.

Finally, the registration obligation of a person sentenced on or after January 1, 1982 and prior to June 30, 1992 that is discharged pursuant to this amendment is restored by any subsequent conviction for a crime under Title 17 or Title 17-A in this State that is punishable by imprisonment for a term of one year or more or a subsequent conviction under the laws of any other jurisdiction of a crime that is punishable by a term of imprisonment exceeding one year.

Enacted Law Summary

Public Law 2009, chapter 365 makes number of changes to the Maine Criminal Code. Specifically, 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

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Offender Registration and Notification Act of 1999 and by making the law applicable only to those persons convicted on or after June 30, 1992. 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. Public Law 2009, chapter 365 also 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.

Public Law 2009, chapter 365 also makes changes to the Sex Offender Registration and Notification Act of 1999. It creates an exception to the application provision of the SORNA of 1999 by specifying that a person sentenced on or after January 1, 1982 and prior to June 30, 1992 is not required to register if that person submits to the Department of Public Safety, State Bureau of Identification, in a form to be determined by the bureau, documentation to establish the following: the person was finally discharged from the correctional system prior to September 1, 1998; the person's convictions do not include more than one 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; at the time of the offense, the person had not 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; at the time of the offense, the person had not 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; subsequent to the commission of the offense, the person has not been convicted of a crime under the Maine Revised Statutes, Title 17 or Title 17-A in this State that is punishable by imprisonment for a term of one year or more; and, subsequent to the commission of the offense, the person has not been convicted under the laws of any other jurisdiction of a crime that is punishable by a term of imprisonment exceeding one year. This requirement does not include a crime under the laws of another jurisdiction that is classified by the laws of that jurisdiction as a misdemeanor and is punishable by a term of imprisonment of 2 years or less. A person's duty to register continues until the bureau determines that documentation meets the requirements and any rules adopted by the bureau, and a person who submits documentation is responsible for the costs of any criminal history record checks required. The registration obligation of a person sentenced on or after January 1, 1982 and prior to June 30, 1992 that is discharged is restored by any subsequent conviction for a crime under Title 17 or Title 17-A in this State that is punishable by imprisonment for a term of one year or more or a subsequent conviction under the laws of any other jurisdiction of a crime that is punishable by a term of imprisonment exceeding one year.

Public Law 2009, chapter 365 also amends the SORNA of 1999 by: defining the term "offender" as a person to whom the Sex Offender Registration and Notification Act of 1999 applies; identifying when specified instances of proof give rise to permissible inferences under the Maine Rules of Evidence, Rule 303; amending 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 the Maine Revised Statutes, Title 17-A, chapter 11; amending 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

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occurrence of the new offense.

It also 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. Public Law 2009, chapter 365 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, and clarifies that a certification made by the record custodian also may be made by the record custodian's designee. Finally, it makes these changes retroactive to January 1, 1982.

**LD 1166 An Act To Implement the Recommendations of the Ad Hoc Task Force
on the Use of Deadly Force by Law Enforcement Officers Against
Individuals Suffering From Mental Illness**

PUBLIC 451

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PRIEST GERZOFSKY	OTP-AM	H-413 S-337 DIAMOND

This bill implements legislative recommendations from the Attorney General's Ad Hoc Task Force on the Use of Deadly Force by Law Enforcement Officers Against Individuals Suffering From Mental Illness. The bill includes recommendations for increased law enforcement training and awareness of mental illness and the involuntary commitment process, increased sharing of mental health patients' information by mental health professionals to law enforcement consistent with Health Insurance Portability and Accountability Act of 1996 standards and increased education and awareness on the part of mental health providers regarding prohibitions of access to firearms by persons who are to be discharged from commitment.

Committee Amendment "A" (H-413)

This amendment amends language in the bill to reflect the fact that when a person is first taken by law enforcement to a hospital for a psychiatric examination, it may be any hospital and not necessarily a psychiatric hospital.

Senate Amendment "A" To Committee Amendment "A" (S-337)

This amendment provides that when the Board of Trustees of the Maine Criminal Justice Academy incorporates specific training on mental illness as a component of the police tactical team certification process, it does not have to provide an electronic version of the training. The amendment also strikes the appropriations and allocations section.

Enacted Law Summary

Public Law 2009, chapter 451 implements legislative recommendations from the Attorney General's Ad Hoc Task Force on the Use of Deadly Force by Law Enforcement Officers Against Individuals Suffering From Mental Illness. Public Law 2009, chapter 451 includes recommendations for increased law enforcement training and awareness of mental illness and the involuntary commitment process, increased sharing of mental health patients' information by mental health professionals to law enforcement consistent with Health Insurance Portability and Accountability Act of 1996 standards and increased education and awareness on the part of mental health providers regarding prohibitions of access to firearms by persons who are to be discharged from commitment.