

MAINE STATE LEGISLATURE

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STATE OF MAINE
124TH LEGISLATURE
SECOND REGULAR SESSION



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

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

April 2010

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STATE OF MAINE

124TH LEGISLATURE
SECOND 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 Second 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:

<i>CARRIED OVER</i>	<i>Carried over to a subsequent session of the Legislature</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 HOUSES</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 of the 124th Legislature is Monday, July 12, 2010. The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills.

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household member. A person subject to firearm seizure pursuant to this authority is subject to a new bail condition established in the Maine Revised Statutes, Title 15, section 1023, subsection 4-A. The new provision requires, as a condition of bail, that all firearms in the possession of the person arrested be relinquished to a law enforcement officer and that the person refrain from possessing a firearm or other specified dangerous weapons until further order of a court. Upon request of the defendant, such a bail condition must be heard by the court as expeditiously as possible.

The bill also amends Title 25, section 2803-B to expand policies for domestic violence by specifying that all law enforcement agencies adopt a written policy for the seizure of firearms and safe storage of firearms seized by a law enforcement officer in a domestic violence arrest.

The bill was not referred to committee.

LD 1822

An Act To Further Amend the Sex Offender Registration and Notification Act of 1999

**PUBLIC 570
EMERGENCY**

Sponsor(s)

Committee Report

Amendments Adopted

On December 22, 2009, the Maine Law Court issued its decision in *State v. Letalien*, 2009 ME 130. The Law Court held that "the retroactive application of the lifetime registration requirement and quarterly in-person verification procedures of SORNA of 1999 to offenders originally sentenced subject to SORA of 1991 and SORNA of 1995, without, at a minimum, affording those offenders any opportunity to ever be relieved of the duty as was permitted under those laws, is ... an unconstitutional ex post facto law...." The Law Court stayed the mandate of the decision until March 31, 2010 in order to provide the Legislature the opportunity to deal with the issue. This bill of the Joint Standing Committee on Criminal Justice and Public Safety responds to the constitutional concern raised in *Letalien* in two ways.

First, it amends the in-person verification provisions to conform with those of Alaska that were found constitutional by the United States Supreme Court in *Smith v. Doe*, 538 U.S. 84 (2003). Maine's ex post facto clause is interpreted consistently with the United States Constitution, so this bill provides for verification for persons retroactively required to register as lifetime registrants that is consistent with the Alaska law found constitutional in *Smith v. Doe*. In particular, the bill amends the verification of registry information for persons sentenced on or after January 1, 1982 and prior to September 18, 1999. For 10-year registrants sentenced during that time period, the Department of Public Safety, State Bureau of Identification shall verify the registration information in writing as provided by the bureau on each anniversary of the registrant's initial registration date and once every five years in person. For lifetime registrants sentenced in that time period, the bureau shall verify the registration information in writing as provided by the bureau every 90 days after that lifetime registrant's initial registration date and once every five years in person. The bill also provides that if there is a reason to believe the offender's appearance has changed significantly, the law enforcement agency or the bureau may instruct the offender in writing to appear in person at the registration agency with a current photograph or to allow a photograph to be taken or, if authorized in writing by the law enforcement agency or the bureau, to submit a new photograph without appearing in person.

Second, the bill expands the provisions to allow certain registrants to be relieved of their duty to register on application and proof of legislatively established factors. An additional waiver scheme that authorized registrants to petition the court for relief from the duty to register was not included in the bill at this juncture due to a substantial fiscal note from the judicial branch, but may be considered again in the next legislative session.

Specifically, the bill expands the existing exception that was enacted pursuant to Public Law 2009, chapter 365 to

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allow the opportunity for additional registrants to provide documentation to the State Bureau of Identification to determine if they qualify for relief from the duty to register. First, it allows persons sentenced in Maine on or after June 30, 1992 and prior to September 18, 1999 who were finally discharged from the correctional system at least 10 years prior to applying for relief and who meet the other existing factors of the Maine Revised Statutes, Title 34-A, section 11202-A to apply. Second, it allows persons sentenced in Maine on or after September 18, 1999 and prior to July 30, 2004 for a violation of former Title 17-A, section 252 who were finally discharged at least 10 years prior to applying for relief and who meet the other existing factors of Title 34-A, section 11202-A to apply. The former crime of rape was added to the list of registerable offenses pursuant to Public Law 2003, chapter 711, so people convicted of rape prior to that law, which became effective on July 30, 2004, were also retroactively made lifetime registrants. Finally, it allows persons sentenced in another jurisdiction who were finally discharged from the correctional system at least 10 years prior to applying for relief, who have been in full compliance with the registration duties as a resident required under Title 34-A, section 11202-A, subsection 2 since September 12, 2009 and who meet the other existing criteria of Title 34-A, section 11202-A to apply. The intent of the amendments to Title 34-A, section 11202-A is to make the relief process available to Maine residents with out-of-state convictions, but not to encourage convicted offenders to move to Maine solely to evade registration requirements in their home states or in Maine. Accordingly, the legislation sets a date of September 12, 2009, the original effective date of this statutory exception, as the deadline by which persons with out-of-state convictions that require registration must be residents in compliance with Maine's Sex Offender Registration and Notification Act of 1999 in order to qualify. This reduces the likelihood that persons will move to Maine primarily to take advantage of the exception. It also reduces the likelihood of factual disputes over residency status, as the determination depends on registration and verification paperwork that the registrant must already have filed with the State Bureau of Identification as part of the registration and verification process, and in which the registrant would have identified his or her own status. It decreases the burden on both the State Bureau of Identification and the applicant regarding obtaining documentation to establish residency for the purposes of the exception. Finally, it significantly reduces the likelihood of applicants fabricating evidence of residency for the purposes of the exception.

The bill also changes the calculation of the 10-year registrant start times in Title 34-A, section 11225-A to make consistent the calculation of the 10-year registration period imposed retroactively for 10-year registrants sentenced January 1, 1982 to June 30, 1992 with that for 10-year registrants sentenced June 30, 1992 to September 17, 1999.

Enacted Law Summary

On December 22, 2009, the Maine Law Court issued its decision in *State v. Letalien*, 2009 ME 130. The Law Court held that "the retroactive application of the lifetime registration requirement and quarterly in-person verification procedures of SORNA of 1999 to offenders originally sentenced subject to SORA of 1991 and SORNA of 1995, without, at a minimum, affording those offenders any opportunity to ever be relieved of the duty as was permitted under those laws, is ... an unconstitutional ex post facto law...." The Law Court stayed the mandate of the decision until March 31, 2010 in order to provide the Legislature the opportunity to deal with the issue. Public Law 2009, chapter 570 responds to the constitutional concern raised in *Letalien* in two ways.

First, it amends the in-person verification provisions to conform with those of Alaska that were found constitutional by the United States Supreme Court in *Smith v. Doe*, 538 U.S. 84 (2003). Maine's ex post facto clause is interpreted consistently with the United States Constitution, so this bill provides for verification for persons retroactively required to register as lifetime registrants that is consistent with the Alaska law found constitutional in *Smith v. Doe*. In particular, the bill amends the verification of registry information for persons sentenced on or after January 1, 1982 and prior to September 18, 1999. For 10-year registrants sentenced during that time period, the Department of Public Safety, State Bureau of Identification shall verify the registration information in writing as provided by the bureau on each anniversary of the registrant's initial registration date and once every five years in person. For lifetime registrants sentenced in that time period, the bureau shall verify the registration information in writing as provided by the bureau every 90 days after that lifetime registrant's initial registration date and once every five years in person. Public Law 2009, chapter 570 also provides that if there is a reason to believe the offender's appearance has changed significantly, the law enforcement agency or the bureau may instruct the offender in writing to appear in person at the registration agency with a current photograph or to allow a photograph to be taken or, if authorized

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in writing by the law enforcement agency or the bureau, to submit a new photograph without appearing in person.

Second, the Public Law 2009, chapter 570 expands the provisions to allow certain registrants to be relieved of their duty to register on application and proof of legislatively established factors. An additional waiver scheme that authorized registrants to petition the court for relief from the duty to register was not included in the bill at this juncture due to a substantial fiscal note from the judicial branch, but may be considered again in the next legislative session.

Specifically, Public Law 2009, chapter 570 expands the existing exception that was enacted pursuant to Public Law 2009, chapter 365 to allow the opportunity for additional registrants to provide documentation to the State Bureau of Identification to determine if they qualify for relief from the duty to register. First, it allows persons sentenced in Maine on or after June 30, 1992 and prior to September 18, 1999 who were finally discharged from the correctional system at least 10 years prior to applying for relief and who meet the other existing factors of the Maine Revised Statutes, Title 34-A, section 11202-A to apply. Second, it allows persons sentenced in Maine on or after September 18, 1999 and prior to July 30, 2004 for a violation of former Title 17-A, section 252 who were finally discharged at least 10 years prior to applying for relief and who meet the other existing factors of Title 34-A, section 11202-A to apply. The former crime of rape was added to the list of registerable offenses pursuant to Public Law 2003, chapter 711, so people convicted of rape prior to that law, which became effective on July 30, 2004, were also retroactively made lifetime registrants. Finally, it allows persons sentenced in another jurisdiction who were finally discharged from the correctional system at least 10 years prior to applying for relief, who have been in full compliance with the registration duties as a resident required under Title 34-A, section 11202-A, subsection 2 since September 12, 2009 and who meet the other existing criteria of Title 34-A, section 11202-A to apply. The intent of the amendments to Title 34-A, section 11202-A is to make the relief process available to Maine residents with out-of-state convictions, but not to encourage convicted offenders to move to Maine solely to evade registration requirements in their home states or in Maine. Accordingly, the legislation sets a date of September 12, 2009, the original effective date of this statutory exception, as the deadline by which persons with out-of-state convictions that require registration must be residents in compliance with Maine's Sex Offender Registration and Notification Act of 1999 in order to qualify. This reduces the likelihood that persons will move to Maine primarily to take advantage of the exception. It also reduces the likelihood of factual disputes over residency status, as the determination depends on registration and verification paperwork that the registrant must already have filed with the State Bureau of Identification as part of the registration and verification process, and in which the registrant would have identified his or her own status. It decreases the burden on both the State Bureau of Identification and the applicant regarding obtaining documentation to establish residency for the purposes of the exception. Finally, it significantly reduces the likelihood of applicants fabricating evidence of residency for the purposes of the exception.

Public Law 2009, chapter 570 also changes the calculation of the 10-year registrant start times in Title 34-A, section 11225-A to make consistent the calculation of the 10-year registration period imposed retroactively for 10-year registrants sentenced January 1, 1982 to June 30, 1992 with that for 10-year registrants sentenced June 30, 1992 to September 17, 1999.

Public Law 2009, chapter 570 was enacted as an emergency measure effective March 30, 2010.