

**STATE OF MAINE
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FIRST REGULAR SESSION**

**Final Report
of the**

**COMMISSION TO IMPROVE COMMUNITY SAFETY
AND SEX OFFENDER ACCOUNTABILITY**

January 2004

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EXECUTIVE SUMMARY

The Commission to Improve Community Safety and Sex Offender Accountability was created pursuant to Resolve 2003, chapter 75 during the First Regular Session of the 121st Legislature. The commission was established to provide a legislative forum to review criminal sentencing laws for sex crimes and to review sex offender registration and notification laws and policies. The purpose of this commission's review was to take a thoughtful and comprehensive look at Maine's sex offender laws and to identify areas in which immediate legislative and policy change is necessary to increase community safety.

The commission consisted of 17 members who met 5 times. In completing its work, the commission heard presentations from several experts and held a public hearing at which the commission received testimony from victims and their parents, sex offenders and their families, legislators, community leaders and other concerned citizens.

In its focus to ensure public safety, the Commission to Improve Community Safety and Sex Offender Accountability determined that at this time it is appropriate to recommend amendments to both the sentencing provisions in the Maine Criminal Code and to the Sex Offender Registration and Notification Act (SORNA) of 1999. The commission presents to the Second Regular Session of the 121st Legislature the following specific recommendations broken down into these subject areas: "prevention," "sentencing," "transition and treatment," "probation and supervision," "registration" and "notification."

PREVENTION

- Direct the Department of Behavioral and Developmental Services, the Department of Human Services, the Department of Corrections and the Department of Public Safety, in cooperation with the Child Abuse Action Network, to:
 - a. Identify the subpopulation of potential offenders or young persons at risk for offending because they have been sexually or physically abused or face a significant mental health disability, with recognition of the fact that over 95% of sex offenders are male;
 - b. Identify the types of prevention and treatment currently known to work with these young persons;
 - c. Coordinate prevention and education efforts with the goal of seeking coordinated services to transition at-risk youth to healthy adulthood; and
 - d. Report findings to the joint standing committees of the Legislature having jurisdiction over health and human services and criminal justice and public safety issues.
- Encourage the Legislature to support further funding and allocation of resources for prevention education.

SENTENCING

- Carefully review any proposed changes to the laws regarding sentencing or good time practices as they relate to sex offenders, giving community safety the utmost consideration.

- Increase the classification of sex crimes committed against children who have not attained 12 years of age. Without imposing minimum mandatory sentences, the commission recommends providing courts, where victims are under 12 years of age, with an increased potential range of penalties by increasing by one class the following crimes:
 - a. Unlawful sexual contact: 17-A MRSA, §255-A, sub-§1, ¶E (Class C crime) and ¶F (Class B crime);
 - b. Visual sexual aggression against a child: 17-A MRSA, §256 (Class D crime);
 - c. Sexual misconduct with a child under 14 years of age: 17-A MRSA, §258 (Class D crime);
 - d. Solicitation of child by computer to commit a prohibited act: 17-A MRSA, §259 (Class D crime);
 - e. Violation of privacy: 17-A MRSA, §511, sub-§1, ¶D (Class D crime);
 - f. Sexual exploitation of minors: 17 MRSA, §2922, sub-§1, ¶¶A and B (Class B crimes);
 - g. Dissemination of sexually explicit materials: 17 MRSA, §2923 (Class B or C crime); and
 - h. Possession of sexually explicit materials: 17 MRSA, §2924 (Class C or D crime).

Gross sexual assault (17-A MRSA, section 253, sub-1, ¶B) and sexual exploitation of minors (17 MRSA, section 2922, subsection 1, paragraph A-1 and paragraph C) are Class A crimes, carrying a maximum penalty of up to 40 years. Sentences in excess of 20 years, and up to the statutory maximum of 40 years, currently require the sentencing court to identify and elaborate upon certain sentencing criteria that are not present in every case. The commission recommends that where the victim is under 12 years of age, the court shall by statutory definition, have the option to impose a sentence in excess of 20 years.

- Increase the period of probation for persons convicted of sex crimes committed against children who have not attained 12 years of age. Without imposing minimum mandatory sentences, the commission recommends providing courts, where victims are under 12 years of age, with an increased potential range of penalties by increasing periods of

probation for persons convicted under 17-A MRSA, Chapter 11 (Sexual Assaults) or 17 MRSA, Chapter 93-B (Sexual Exploitation of Minors) as follows:

- a. For a person convicted of a Class A crime, a period of probation not to exceed 18 years;
 - b. For a person convicted of a Class B crime, a period of probation not to exceed 12 years; or
 - c. For a person convicted of a Class C crime, a period of probation not to exceed 6 years.
- Rename “dangerous sexual offender”¹ as “repeat sexual assault offender.”
 - Allow the court to have the option to impose a sentence of imprisonment in excess of 20 years, based upon the fact that the defendant was convicted of gross sexual assault after having been previously convicted and sentenced for a Class B or Class C crime of unlawful sexual contact.
 - Allow the court to have the option to impose a sentence of probation of up to 18 years based upon the fact that the defendant was convicted of gross sexual assault after having been previously convicted and sentenced for a Class B or Class C crime of unlawful sexual contact.

TRANSITION AND TREATMENT

- Allocate resources to provide forensic and presentence evaluations for all sex offenders.
- Provide treatment for sex offenders while they are incarcerated and provide pre-release counseling before they return to the community.
- Create a network of providers, aided by State training and resources, to ensure a collaborative, consistent and up-to-date treatment effort.

PROBATION AND SUPERVISION

- Increase the number of Sex Offender Specialists in the Department of Corrections and make the reallocation of probation services for sex offenders the first priority in offender supervision.
- Encourage continued communication and collaboration among probation officers, sex offender treatment providers and law enforcement officers.

¹ 17-A MRSA §1252, sub-§4-B.

REGISTRATION

- Rename the current SORNA of 1999 registration categories “sexually violent predators” and “sex offenders” to “lifetime registrants” and “10-year registrants.”
- Move Class D and Class E offenses that currently require lifetime registration as “sexually violent predators” under the SORNA of 1999 to the list of offenses requiring 10-year registration for “sex offenders.”
- Request that the Criminal Law Advisory Commission² (CLAC):
 - a. Review the Sex Offender Registration and Notification Act of 1999 to identify all crimes of gross sexual assault and unlawful sexual contact that currently do not require any registration;
 - b. Assess whether the current Maine crimes listed as sex offenses and sexually violent offenses are appropriate under the Federal Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended; and
 - c. Report its findings and any proposed changes to the Joint Standing Committee on Criminal Justice and Public Safety by March 1, 2004.
- Make technical drafting changes to the Sex Offender Registration and Notification Act (SORNA) of 1999, including:
 - a. Adding to the list of registerable offenses the former crime of rape,³ restoring the former crimes of unlawful sexual contact⁴ and solicitation of child by computer to commit a prohibited act⁵ and moving from the definition of “sex offense” to “sexually violent offense” the crimes of unlawful sexual contact that involve penetration;⁶
 - b. Making registration requirements consistent by removing from the crime of “kidnapping” the defense that the actor is a parent, which is consistent with the crime of criminal restraint for purposes of sex offender registration; and
 - c. Defining the terms “another state,” “registrant,” “jurisdiction,” and “tribe” to be more consistent with federal law.

² See Title 17-A MRSA, chapter 55.

³ 17-A MRSA §252.

⁴ 17-A MRSA §255.

⁵ 17-A MRSA §259.

⁶ See 17-A MRSA §255, sub-§3.

- Authorize Maine to suspend the requirement that a sex offender or sexually violent predator register during any period in which the registrant leaves the State, establishes a domicile in another state and remains physically absent from the State.
- Increase from \$25 to \$30 the sex offender and sexually violent predator fee for initial registration and annual renewal registration.
- Refer back to the Joint Standing Committee on Criminal Justice and Public Safety the issue regarding the 10-day time requirement in which a sex offender must verify registration information or a change in registration information with the State Bureau of Identification as described in LD 617, An Act Amending the Time by Which a Sex Offender or Sexually Violent Predator Must Register.

NOTIFICATION

- Request the Maine Chiefs of Police Association, in cooperation with Sexual Assault Response Teams (SARTs) and sexual assault crisis centers, to draft a model public notification policy that will be added to the list of mandatory law enforcement policies for which agencies must report their implementation and training to the Board of Trustees of the Maine Criminal Justice Academy.
- Strongly encourage local law enforcement agencies that maintain public web sites to provide a link to the state Sex Offender Registry⁷ and strongly discourage those same law enforcement agencies from providing public access to individual agencies' own sex offender registries.

⁷ <http://www4.informe.org/sor/>

I. INTRODUCTION

A. STUDY CREATION AND CHARGE

The Commission to Improve Community Safety and Sex Offender Accountability was created pursuant to Resolve 2003, chapter 75 during the First Regular Session of the 121st Legislature. The commission's charge was to invite the participation of experts and interested parties, gather information and request necessary data from public and private entities to examine and recommend any changes to current laws governing the sentencing, registration, release and placement of sex offenders. As its title implies, the commission's overarching mission was to increase community safety. Specifically, the Legislature directed the commission to accomplish the following:

- Define and establish minimum standards and guidelines concerning notification to the public about sex offenders;
- Examine matters concerning the management of sex offenders, including the risk assessment that is currently used to assess sex offenders upon release, the necessity of prerelease discharge plans and the benefits of treatment while in corrections facilities; and
- Examine issues regarding registration, including the current time period allowed sex offenders before they must register with local law enforcement agencies.

The commission consisted of 17 members that included three legislators and representatives from the Department of Corrections, the Department of Public Safety's State Bureau of Identification, the Office of the Attorney General, a statewide coalition advocating for victims of sexual assault, an organization that provides direct support services to victims of sexual assault, the Maine Civil Liberties Union, the Maine Chiefs of Police Association, the Maine Sheriffs' Association, the Maine Association of Criminal Defense Lawyers, the Maine Prosecutors Association, the Maine Council of Churches, victims of sexual assault, psychologists or psychiatrists who treat sex offenders and persons who provide direct services to sex offenders. The Chief Justice of the Supreme Judicial Court also designated a Justice of the Superior Court to serve on the commission as a member.

B. PROCESS

1. Meetings and presentations. The Commission to Improve Community Safety and Sex Offender Accountability met five times. In completing its work, the Commission heard presentations from the following experts.

- **Dr. Sue Righthand**, a psychologist and national expert on issues involving sex offenders and their treatment, provided the commission with an overview about how to define different types of sexual abuse, who offends, how offenders are classified or typed, factors that contribute to sexual offending and recidivism, risk

assessment tools and treatment modalities. (See Appendix D for Dr. Righthand's complete presentation.)

- **Dr. Joseph Fitzpatrick**, who served on the commission and is a psychologist and Director of Behavioral Health Services at the Department of Corrections, explained his department's progress in providing treatment to incarcerated sex offenders.
 - **Michael Ranhoff**, a licensed polygraph examiner, and **Sgt. Douglas Parlin**, the Polygraph Examiner Supervisor of the Maine State Police, explained how polygraph examinations are used in the treatment of sex offenders.
 - **Nancy Dentico** and **Bud Hall**, probation officers who are Sex Offender Specialists, and **Dan Ouellette**, a Regional Correctional Administrator for the Department of Corrections, gave an overview of their roles supervising sex offenders.
 - **Lt. Jackie Theriault** of the Maine State Police, who served on the commission and works for the State Bureau of Identification (SBI), summarized the history of the Sex Offender Registry, explained the impact of legislative changes on the registry and provided an update on the status of Internet access to sex offender information.¹
 - **Lt. Col. Jeff Harmon** of the State Police gave a demonstration of the on-line Sex Offender Registry.
 - **Representative Sean Faircloth**, who served as co-chair of the commission, spoke to the commission about a conference he attended: the University of Wisconsin's 19th Annual Midwest Conference on Child Sexual Abuse, which is the oldest conference of its kind in the country.
 - **Dr. Anne LeBlanc**, the Director of the State Forensic Service, provided the commission with written testimony about her agency's post-conviction evaluation process for sex offenders.
- 2. Public hearing.** In addition to presentations from these experts, the commission held one public hearing at which many people spoke, including victims and their parents, sex offenders and their families, legislators and the Mayor and City Manager of Augusta. (See Appendix E for a summary of comments from the presentations and public hearing.)

¹ At the time of Lt. Theriault's presentation, the SBI was working to complete Internet access to the Sex Offender Registry. The registry is now available on-line at <http://www4.informe.org/sor/>

II. BACKGROUND AND HISTORY

Over the last 10 years, Maine has created and amended a number of laws regarding sex offender registration and notification and criminal sentencing for sex offenses. These changes have been made in response to requirements imposed on the states by the federal government and in response to the public's desire for stronger sentences for sex offenders and more information about sex offenders residing in the community. A history of the legislative changes follows.

A. SEX OFFENDER REGISTRATION AND NOTIFICATION

The legislative purpose of Maine's sex offender registration and notification laws is to protect the public from potentially dangerous sex offenders by enhancing access to information concerning sex offenders. In an effort to provide better access and more detailed information, these laws have evolved over time.

1. Sex Offender Registration Act of 1992 (SORA)²

Maine's first law regarding the registration of sex offenders was the Sex Offender Registration Act (SORA) of 1992. The SORA applied to sex offenders sentenced on or after June 30, 1992 and before September 1, 1996. For purposes of the act, only persons convicted of gross sexual assault³ against victims less than 16 years of age at the time of the crime had to register as "sex offenders." A sex offender had to register that offender's address with the Department of Public Safety, State Bureau of Identification (SBI) for 15 years. A sex offender who failed to register or update registration information committed a Class E crime.

2. Sex Offender Registration and Notification Act (SORNA of 1996)⁴

The SORNA of 1996 changed the SORA of 1992 by slightly expanding the definition of "sex offender," by increasing the penalty for registration violations and by adding a notification component that provides law enforcement and the public greater access to information about sex offenders. The SORNA of 1996 applied to sex offenders sentenced on or after September 1, 1996 and before September 18, 1999.

For purposes of this act, "sex offender" was defined as an individual convicted of gross sexual assault against a victim less than 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 was less than 16 years of age at the time of the crime. As in the SORA of 1992, the SORNA of 1996 required a sex offender to register that offender's address with the SBI for 15 years after the offender's release. A sex offender who failed to register or update registration information committed a Class D crime, except that an offender who committed a registration violation when the offender had 2 or more prior convictions for registration violations committed a Class C crime.

² See 34-A MRSA, Chapter 11, which was repealed by Public Law 2001, c.439.

³ See 17-A MRSA §253.

⁴ See 34-A MRSA, Chapter 13, which was repealed by Public Law 2001, c.439.

The biggest change made by the SORNA of 1996 was the addition of the element of notification, which gave law enforcement new responsibilities. When a sex offender was conditionally released or discharged, the Department of Corrections was required to notify the SBI of the address where the sex offender would reside, the address where the sex offender would work, the geographic area to which the sex offender's release was limited and the status of the sex offender when released as determined by a risk assessment instrument used by the Department of Corrections.⁵ Upon receiving this information, the SBI forwarded the information to all law enforcement agencies having jurisdiction in those areas where the sex offender worked or resided. The Department of Corrections and law enforcement agencies that received registration information then notified members of the public who they determined appropriate to ensure public safety.

3. Sex Offender Registration and Notification Act of 1999 (SORNA of 1999)⁶

The SORNA of 1999 greatly expanded the definition of "sex offender" and created the new category "sexually violent predator." The SORNA of 1999 also required the State to provide registration information to the Federal Bureau of Investigation to be used in a national database. The adoption of this act put Maine in compliance with the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act,⁷ which ensured that Maine would not receive a reduction in its federal Byrne Formula Grant funding.

Maine's SORNA of 1999 applies to all persons who commit sex offenses and sexually violent offenses.⁸ Under the SORNA of 1999, a sex offender is required to register that offender's address with the SBI for 10 years after release. A sexually violent predator must

⁵ The risk assessment instrument is a tool used by the Department of Corrections to determine the appropriate level of supervision necessary once the sex offender is released from incarceration.

⁶ See 34-A MRSA, Chapter 15.

⁷ See 42 U.S.C. §14071.

⁸ Pursuant to 34-A MRSA §11203, sub-§6, "sex offense" includes:

A. A violation under Title 17, section 2922, 2923 or 2924;

B. A violation under Title 17-A, section 253, subsection 2, paragraph E, F, G, H, I or J; Title 17-A, section 254; Title 17-A, section 255-A, subsection 1, paragraph A, B, I, J, K, L, M, N, Q, R, S or T; Title 17-A, section 256; Title 17-A, section 258; Title 17-A, section 301, unless the actor is a parent of the victim; Title 17-A, section 302; Title 17-A, section 511, subsection 1, paragraph D; Title 17-A, section 556; Title 17-A, section 852, subsection 1, paragraph B; or Title 17-A, section 855; or

C. A violation of an offense in another jurisdiction, including, but not limited to, a state, federal, military or tribal court, that includes the essential elements of an offense listed in paragraph A or B.

Pursuant to 34-A MRSA §11203, sub-§7, "sexually violent offense" includes:

A. A conviction for one of the offenses or for an attempt to commit one of the offenses under Title 17-A, section 253, subsection 1; Title 17-A, section 253, subsection 2, paragraph A, B, C or D; or Title 17-A, section 255-A, subsection 1, paragraph C, D, E, F, G, H, O or P; or

B. A conviction for an offense or for an attempt to commit an offense of the law in another jurisdiction, including, but not limited to, a state, federal, military or tribal court, that includes the essential elements of an offense listed in paragraph A.

register for the duration of the offender's life. If the sex offender or sexually violent predator moves out of the State or travels to another state to attend school or work for a period of time, the sex offender or sexually violent predator must register the new address with the SBI and must register with a designated law enforcement agency in the new state, if the state has a registration requirement. The SBI may charge an offender a \$25 annual registration fee.

The penalties for violating registration requirements under the SORNA of 1999 and the public notification process under the SORNA of 1999 are the same as that under the SORNA of 1996. In addition to entering registration information in its database, the SBI must forward the registration information to the Federal Bureau of Investigation to be entered in the national sex offender database from which law enforcement agencies from other states may access information. The SBI also must verify the domicile of a sex offender on each anniversary of the sex offender's initial registration date and must verify the domicile of a sexually violent predator every 90 days after that offender's initial registration date.

When adopted, the SORNA of 1999 applied only to persons sentenced on or after September 1, 1996 and before September 18, 1999. However, pursuant to Public Law 2001, chapter 439, the act repealed the two prior acts governing sex offender registration and notification that applied before 1999 and now applies retroactively to all sex offenders and sexually violent predators convicted on or after June 30, 1992.

In 2003 the Legislature amended the Sex Offender Registration and Notification Act of 1999 again. Public Law 2003, chapter 371 made a number of technical changes and made substantive changes that:

- a. Expanded the definition of "sex offense" to include two crimes regarding sexual exploitation of minors: dissemination of sexually explicit materials and possession of sexually explicit materials;⁹
- b. Clarified the process for distribution of sex offender and sexually violent predator registration information to the Department of Corrections and law enforcement agencies and clarified what access to that information the public and offenders have, including Internet access;
- c. Clarified that a sex offender or sexually violent predator shall notify the SBI in writing when that person's place of employment or college or school changes, as a sex offender or sexually violent predator is required to do for a change in domicile; and
- d. Added county jails and state mental health institutes to the list of entities required to provide notification to the SBI of a sex offender's or sexually violent predator's conditional release or discharge from that entity's facility.

⁹ See 17 MRSA §2923 and §2924.

B. SENTENCING CHANGES AND RELATED ENHANCEMENTS TO THE MAINE CRIMINAL CODE

1. Sentencing of “dangerous sexual offenders”¹⁰

In addition to Maine’s sex offender registration and notification acts, the 119th Legislature enacted “An Act to Implement the Recommendations of the 118th Legislative Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators.”¹¹ That law made changes in sentencing sex offenders convicted of committing a second gross sexual assault that:

- a. Removed the current ceiling for terms of imprisonment. The law allows a court to impose a straight term of imprisonment for any term of years for the “dangerous sexual offender” or a person who commits a repeat gross sexual assault. (Existing law allows the court to set a definite period of imprisonment not to exceed 40 years);
- b. Removed the current probation period caps. The law allows a court to impose a period of probation for any term of years for the “dangerous sexual offender.” For other serious crimes, current law allows a court to place a person convicted of a Class A crime on probation for a period not to exceed 6 years;
- c. Created a new post-release mechanism called “supervised release.” The law allows a court to impose a term of supervised release of any term of years with a straight term of imprisonment for the “dangerous sexual offender;” and
- d. Allowed for a period of supervised release after imprisonment for a conviction of gross sexual assault. The law allows a court to impose a defined period of supervised release depending upon the class of crime of the gross sexual assault for which the offender was convicted. The period of supervised release may be up to 6 years for Class B and C gross sexual assaults and up to 10 years for Class A gross sexual assaults.

2. Additional changes to the Maine Criminal Code

In addition to the changes implemented at the recommendation of the Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators, the Legislature has criminalized other sexual misconduct and made it easier to prosecute certain offenses. Examples of some of these legislative changes include the following.

- a. Public Law 2003, chapter 138, which was LD 722, An Act to Protect Against Unlawful Sexual Touching, criminalized intentional sexual contact with a person who is either 14 or 15 years of age who is not the actor's spouse when the actor is at least 10 years older than the other person. This form of sexual abuse of a minor is a Class D crime. It is a defense to a prosecution for the new crime that the actor

¹⁰ See 17-A MRSA, Chapter 50 and 17-A MRSA §1252, sub-§4-B.

¹¹ Public Law 1999, chapter 788.

reasonably believed the other person to be at least 16 years of age. Public Law 2003, chapter 138 also created the new crime of unlawful sexual touching. "Sexual touching" means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire. The crime of unlawful sexual touching was modeled after the current crime of unlawful sexual contact.

- b. Public Law 2001, chapter 412, which was LD 125, An Act to Specify That Possession of Sexually Explicit Materials by Way of the Internet Is Criminal, criminalized possession of sexually explicit materials that have come into a person's possession by way of the Internet and made all provisions regarding sexually explicit materials consistent by including computer data files in the types of materials regulated under the law. Public Law 1999, chapter 349, which was An Act to Make It a Crime to Solicit a Child by Means of a Computer to Commit a Prohibited Act, criminalized the use of a computer to knowingly solicit, entice, persuade or compel another person to meet with the actor for the purpose of engaging in a prohibited sexual act, sexual contact or sexual exploitation of that person.
- c. Public Law 1999, chapter 438, which was LD 2019, An Act to Remove the Statute of Limitations for Unlawful Sexual Contact and Sexual Abuse of Minors, eliminated the statute of limitations for criminal prosecution for unlawful sexual contact or sexual abuse of minors if the victim was under 16 years of age at the time of the offense.

C. SEX OFFENDER SPECIALISTS

In an effort to better supervise high-risk sex offenders, the Legislature authorized the Department of Corrections to accept federal money to employ 6 probation officers as "sex offender specialists." These officers have smaller caseloads than other probation officers, so that they can provide closer supervision and have greater contact with their probationers who are all high-risk sex offenders. Increased contacts for high-risk sex offenders include probation officers having more contacts with the offender, as well as communicating regularly with an offender's employer, family, neighbors and others in the community with whom the offender has regular contact.

III. FINDINGS AND RECOMMENDATIONS

The Commission to Improve Community Safety and Sex Offender Accountability was established to provide a legislative forum to review criminal sentencing laws for sex crimes and to review sex offender registration and notification laws and policies. Each year the Legislature considers many bills proposing to amend the laws regarding sex offenders, and each year new issues arise that necessitate current laws to be further defined or expanded. The purpose of this commission's review was to take a thoughtful and comprehensive look at Maine's laws and to identify areas in which legislative and policy change is necessary. Concentrating its focus on

ensuring public safety, the commission determined that at this time it is appropriate to recommend amendments to both the sentencing provisions in the Maine Criminal Code and to the Sex Offender Registration and Notification Act of 1999 (SORNA). The commission's specific recommendations found below are broken down into the following subject areas: "prevention," "sentencing," "transition and treatment," "probation and supervision," "registration" and "notification."

A. PREVENTION

Many resources and much time have been focused on the laws and policies regarding sentencing practices for sex offenses and those governing implementation and application for sex offender registration and notification. Work in these areas needs to continue, but that effort must occur in conjunction with a proactive effort to create prevention strategies. The commission believes that the first step in prevention is identifying those persons who are at the highest risk for offending. Identifying this population and investing efforts in education and prevention practices for them will reduce the likelihood that these high-risk individuals may later commit sexual assaults themselves. Identifying this population and studying persons who have offended is challenging. Research of sex offenders varies in its results. This is true in part because sex offenses are underreported compared to many crimes and because studies regarding recidivism are many years long, which makes it difficult to track offenders and accurately record their social and criminal behavior over time.

Clearly, the great majority of survivors of sexual assault do not go on to offend. However, studies have found that children who are sexually or physically abused are at a higher risk for later becoming offenders themselves, and studies further indicate that this is especially true if the victims are boys.¹² The commission believes that prevention is a critically important part of the whole system and that not all resources should be directed at only reactive measures after offenses occur. Investing in prevention programs now and diverting those who are at a high risk for committing sexual assaults will improve public safety and save criminal justice resources. To accomplish this goal, the commission urges State agencies and other providers to ensure that whatever treatment and prevention programming is employed is research-based and proven effective before the State promotes, funds or implements the treatment.

Because of the evidence indicating that there is a greater likelihood of child victims later becoming offenders, the commission makes the following unanimous recommendations regarding prevention.¹³

1. Direct the Department of Behavioral and Developmental Services, the Department of Human Services, the Department of Corrections and the

¹² A 1998 study of sex offenders by Becker and Murphy indicated that approximately 30 percent of adult sex offenders had histories of child sexual abuse and that those who abuse boys have even higher rates. This finding was further supported by the 2002 Child Molestation and Prevention Study by Abel and Harlow that indicated that 47 percent of child molesters were sexually abused themselves as children, and those who were abused as children started to offend at an earlier age and molested more children.

¹³ Justice John Atwood, who represented the Judiciary on the commission, abstained from all votes on commission recommendations, which is a common practice of those members who serve on the bench.

Department of Public Safety, in cooperation with the Child Abuse Action Network, to:

- a. Identify the subpopulation of potential offenders or young persons at risk for offending because they have been sexually or physically abused or face a significant mental health disability, with recognition of the fact that over 95% of sex offenders are male;**
- b. Identify the types of prevention and treatment currently known to work with these young persons;**
- c. Coordinate prevention and education efforts with the goal of seeking coordinated services to transition at-risk youth to healthy adulthood; and**
- d. Report findings to the joint standing committees of the Legislature having jurisdiction over health and human services and criminal justice and public safety issues.**

Because most of these young people will not have had contact with the criminal justice system, the commission believes that it is appropriate for the Department of Behavioral and Developmental Services, Bureau of Children's Services to take the lead on this effort. Working with this next generation of youth, especially boys and adolescent young men, is an important and missing step in promoting and providing prevention services.

To compliment this directive of identifying and working with high-risk youth who have not yet offended, the Department of Corrections is reviewing its sex offender treatment programming for juveniles committed to the department. The department is working to ensure that best practices and methods are being used effectively to prevent juveniles from reoffending when they return to the community. The commission supports this effort and encourages the department to complete its assessment as promptly as possible.

2. Encourage the Legislature to support further funding and allocation of resources for prevention education.

In addition to their work with and on behalf of sexual assault survivors, victim advocates play an important role as community educators. These advocates currently provide risk reduction and other prevention-related education programs to students in elementary school through college. The commission encourages further legislative support of funding and resources to ensure that research-based prevention programs continue to exist throughout the schools and communities of the State.

B. SENTENCING

Data demonstrates that sex crimes against children pose a unique threat to community safety. A study of child-focused sexual behavior, which involved gathering self-reported data on victimization rates from 561 offenders, resulted in reporting a total of 291,737 "paraphilic acts"

or perverse sexual behavior, committed against 195,407 victims under 18 years of age. Over 48,000 of those acts involved nonincestuous child molestation with a female victim (224 of the 561 offenders reported committing 5,197 acts against 4,435 female victims) and nonincestuous child molestation with a male victim (153 offenders reported committing 43,100 acts against 22,981 male victims).¹⁴ According to this study, pedophiles, those adults who have a sole or primary fixated focus or interest in erotic and sexual activity with children, generally had significantly more victims and committed a greater number of paraphilic acts than rapists with adult victims. If the number of acts committed against children were cut in half, or even by three-quarters, the number of crimes committed by so few offenders would continue to be staggering.

Approximately 95-98% of sex offenders are male, and many have been sexually or physically abused or have significant mental health diagnoses. Male pedophiles may average as many as 150 victims each, therefore, it is critically important that policy makers consider how to help transition at-risk youth, especially males, to a healthy adulthood.¹⁵

The findings from the Abel et al. report support the conclusion that pedophiles pose a unique threat to community safety. Pedophiles have a higher recidivism rate than most other criminals, and pedophiles usually tend to have multiple victims. Child molestation by these fixated sexual offenders imposes great psychological pain to the individual child victims. While property crimes, for example, are serious, sex crimes committed against children may have ramifications that last decades for these victims.

With the exception of the crime of murder, sex offenses, especially those committed against children, are among the most heinous crimes committed. The tendency of pedophiles to commit crimes serially against multiple children and to commit multiple crimes is a major threat to community safety that exceeds the threat of offenses like property and drug crimes. The rate at which pedophiles continue to sexually assault children in a repeated fashion throughout the offenders' lives, even after completing terms of imprisonment, is greater than that of rapists whose victims are adults. For these reasons, penalties for these crimes warrant enhancement.

There is limited data to support the conclusion that sex offender notification increases community safety. Contrastingly, there is a more effective direct approach: incarceration. By definition, offenders who are incarcerated cannot victimize children. Punishment aside, given the statistics about multiple crimes and multiple victims, removing pedophiles from society is a valid policy goal.

The above factors led the commission to make the following recommendations regarding sentencing.

¹⁴ Abel, G.G., Becker, J.V., Mittelman, M.S., Cunningham-Rathner, J., Rouleau, J.L., & Murphy, W.D., (1987) "Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs," *Journal of Interpersonal Violence* 2(1), 3-25, cited by Prentky, R., (1997) in the *National Institute of Justice Research Report: Child Molestation: Research Issues*.

¹⁵ See Henkel-Johnson, J., "Child Molestation Studies Summary" (2002).

- 1. Carefully review any proposed changes to the laws regarding sentencing or good time practices as they relate to sex offenders, giving community safety the utmost consideration.**

The commission thoroughly reviewed the laws relating to the sentencing and registration of sex offenders and has spent many hours discussing and formulating recommendations that will increase community safety. Keeping public safety as the focus of each discussion, the commission carefully considered the experiences of those who testified or provided information to them, as well as the expertise of fellow members. Although representing many different interests, the members took the information and worked diligently to compromise and make recommendations that are meaningful and can be implemented. Because of this thoughtful and comprehensive process, the commission unanimously recommends that the Legislature also carefully review any proposed changes to the laws regarding sentencing or good time practices as they relate to sex offenders, giving community safety the utmost consideration in its deliberations.

- 2. Increase the classification of sex crimes committed against children who have not attained 12 years of age. Without imposing minimum mandatory sentences, the commission recommends providing courts, where victims are under 12 years of age, with an increased potential range of penalties by increasing by one class the following crimes:¹⁶**
 - a. Unlawful sexual contact: 17-A MRSA, §255-A, sub-§1, ¶E (Class C crime) and ¶F (Class B crime);**
 - b. Visual sexual aggression against a child: 17-A MRSA, §256 (Class D crime);**
 - c. Sexual misconduct with a child under 14 years of age: 17-A MRSA, §258 (Class D crime);**
 - d. Solicitation of child by computer to commit a prohibited act: 17-A MRSA, §259 (Class D crime);**
 - e. Violation of privacy: 17-A MRSA, §511, sub-§1, ¶D (Class D crime);**
 - f. Sexual exploitation of minors: 17 MRSA, §2922, sub-§1, ¶¶A and B (Class B crimes);**
 - g. Dissemination of sexually explicit materials: 17 MRSA, §2923 (Class B or C crime); and**
 - h. Possession of sexually explicit materials: 17 MRSA, §2924 (Class C or D crime).**

¹⁶ The current class is shown in parentheses.

Gross sexual assault (17-A MRSA, section 253, sub-1, ¶B) and sexual exploitation of minors (17 MRSA, section 2922, subsection 1, paragraph A-1 and paragraph C) are Class A crimes, carrying a maximum penalty of up to 40 years. Sentences in excess of 20 years, and up to the statutory maximum of 40 years, currently require the sentencing court to identify and elaborate upon certain sentencing criteria that are not present in every case. The commission recommends that where the victim is under 12 years of age, the court shall by statutory definition, have the option to impose a sentence in excess of 20 years.

The commission recommendation regarding penalties for sex crimes with victims less than 12 years of age does not change the current legal age of consent for sexual activity, nor does it change the current penalty range available for sex offenders whose victims are minors 12 years of age or older.

Of the 16 voting members of the commission, one member opposed this increased classification recommendation applying to sex crimes committed against children less than 12 years of age. The 15 members voting in favor of the recommendation identified several policy reasons to support the change.

- First, America in recent years has become more sensitive to the sexual victimization of children. Yet, according to the National Conference of State Legislatures, Maine has the most lenient range of penalties available in New England for gross sexual assaults against children less than 12 years of age. While there are many factors in sentencing, this NCSL report indicates that Maine has one of the 8 weakest penalty ranges of all states for sex crimes committed against children. The commission concludes that Maine should better reflect modern and appropriate sentencing trends with regard to sex crimes against children. Even with the passage of this proposed classification increase, Maine would still have milder penalty ranges for sex crimes committed against children under 12 years of age than most other states.¹⁷ (See Appendix F: NCSL Sexual Assault on Child Chart.)

¹⁷ According to a report of the National Conference of State Legislatures (October 2003). The same report indicates that:

1. Vermont and Massachusetts give the judge the option of imposing life in prison for sex acts with pre-pubescent children. New Hampshire and Connecticut impose a mandatory minimum of 10 years. Rhode Island imposes a mandatory minimum 20 years. For gross sexual assault with a child victim, Maine has no mandatory minimum and a 40-year maximum sentence. The maximum sentence of 40 years is rarely imposed;

2. Comparing all 50 states to Maine, at least 42 states impose stronger penalty ranges for sex acts against pre-pubescent children, either through a mandatory minimum sentence or a higher maximum sentence. Numerous states make life imprisonment or even the death penalty available for sex acts with child victims; and

3. Historically crimes against children and the sexual abuse of children were little discussed and often swept under the rug, even when credible evidence surfaced. Recent examples of this fact have gained significant mention in the New England media of late. While Maine registration laws may be overbroad, Maine's penalty ranges pertaining to the most dangerous offenders are outdated.

- Second, some of the most respected risk assessment tools specify that the commission of sex crimes against victims under 12 years of age is a key risk factor for increased recidivism. The Minnesota Sex Offender Screening Tool – Revised (mnSOST–R) uses victims under 12 years of age as a major increased recidivism risk factor in its scoring scheme. The Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR) rates sexual interest in victims less than 12 years of age as the highest sexual interest risk factor. The Screening Scale for Pedophilic Interest (SSPI) also uses victims under 12 years of age as an increased risk factor for pedophiles. (See Appendix G: “Survey of Convicted Sex Offenders in the State of Maine” (April 2003).) Researchers in the field who have created these assessment tools recognize that offending against young children is a serious indicator for future offending.
- Third, enhancing penalties for crimes committed against children who have not attained 12 years of age is consistent with federal law. The federal crime of aggravated sexual abuse prohibits engaging in sexual acts involving penetration with victims of any age through the use of force or threat of serious violence and also prohibits engaging in sexual acts involving penetration with victims who have not attained the age of 12 years.¹⁸ Federal law also requires persons who are convicted of such an aggravated offense to register as sex offenders for life.¹⁹

The commission notes that by increasing by one the classification of the specific sex crimes committed against young children, the State achieves the valid goal of giving judges the option of increased incarceration for high-risk sex offenders while:

- Remaining faithful to the existing classification scheme in Maine’s Criminal Code;
- Avoiding mandatory minimum sentences that limit judicial discretion in individual cases where more lenient sentences may be warranted;
- Making explicitly clear to judges that the victimization of children less than 12 years of age warrants increased penalty ranges prompting courts to increase sentences where appropriate in accordance with the increased risk that this category of sex offenders poses to community safety; and
- Creating a criminal classification system that allows for the differentiation of a class of offenders that professionals identify as having a particular high risk of re-offending and allows for the collection of data previously unavailable. This facilitates tracking child sex offenders for future analysis and risk assessment, which in turn will ensure greater community safety.

For these reasons the majority of the commission finds that enhancing the penalty range by one class for sex crimes committed against victims less than 12 years of age is both a moderate and narrowly tailored change that will directly increase community safety.

¹⁸ See 18 U.S.C. §2241(b).

¹⁹ 42 U.S.C. §14071.

- 3. Increase the period of probation for persons convicted of sex crimes committed against children who have not attained 12 years of age. Without imposing minimum mandatory sentences, the commission recommends providing courts, where victims are under 12 years of age, with an increased potential range of penalties by increasing periods of probation for persons convicted under 17-A MRSA, Chapter 11 (Sexual Assaults) or 17 MRSA, Chapter 93-B (Sexual Exploitation of Minors) as follows:**
 - a. For a person convicted of a Class A crime, a period of probation not to exceed 18 years;**
 - b. For a person convicted of a Class B crime, a period of probation not to exceed 12 years; or**
 - c. For a person convicted of a Class C crime, a period of probation not to exceed 6 years.**

For many of the reasons mentioned in recommendation 2 above, the commission unanimously proposes increasing the periods of probation for persons who sexually assault children under 12 years of age. If offenders are not incarcerated, the next best way to manage their behavior is to closely supervise them in the community. Currently, a person convicted under 17-A MRSA, Chapter 11 of a Class A crime may receive up to 10 years of probation, and a person convicted of a Class B or C crime may receive up to 6 years of probation. If the State pleads and proves that at the time of the offense, the victim had not attained the age of 12, the court may exercise the option of increasing the duration of probation. Increasing the potential ranges of probation will allow probation officers to better monitor sex offenders who assault children.

4. Rename “dangerous sexual offender” as “repeat sexual assault offender.”

Consistent with amending the categories “sex offender” and “violent sexual predator” in the SORNA of 1999, commission members unanimously support amending the term “dangerous sexual offender”²⁰ to “repeat sexual assault offender” in Title 17-A. “Repeat sexual assault offender” is a more accurate description of the type of offender to which the statute refers.

5. Allow the court to have the option to impose a sentence of imprisonment in excess of 20 years based upon the fact that the defendant was convicted of gross sexual assault after having been previously convicted of a Class B or Class C crime of unlawful sexual contact.

Without imposing mandatory sentences, the commission unanimously recommends that courts be given the option to sentence offenders who have been convicted and sentenced for committing a Class B or Class C crime of unlawful sexual contact and then are convicted of committing a crime of gross sexual assault to the upper tier of the Class A sentencing range, or

²⁰ 17-A MRSA §1252, sub-§4-B.

21 to 40 years of incarceration. Sentences in excess of 20 years, and up to the statutory maximum of 40 years, require the sentencing court to identify and elaborate upon certain sentencing criteria that are not present in every case. The commission recommends that where the defendant has a prior felony unlawful sexual contact conviction followed by a gross sexual assault, the court shall by statutory definition, have the option to impose a sentence in excess of 20 years, based upon the fact that the defendant has the prior conviction.

This proposed change recognizes the seriousness of this type of offender who commits repeated offenses and therefore poses a higher risk of danger to the public safety. This sentencing recommendation is also consistent with the current law that allows the courts to sentence a person who commits a new gross sexual assault after having been convicted previously and sentenced for another gross sexual assault to a period of incarceration of any term of years.

6. Allow the court to have the option to impose a sentence of probation of up to 18 years based upon the fact that the defendant was convicted of gross sexual assault after having been previously convicted and sentenced for a Class B or Class C crime of unlawful sexual contact.

Without imposing mandatory sentences, the commission unanimously recommends that courts be given the option to sentence offenders who have been convicted and sentenced for committing a Class B or Class C crime of unlawful sexual contact and then are convicted of committing a crime of gross sexual assault to an increased period of probation – up to 18 years. The commission recommends that where the defendant has a prior felony unlawful sexual contact conviction followed by a gross sexual assault, the court shall by statutory definition, have the option to impose a period of probation up to 18 years based upon the fact that the defendant has the prior felony conviction.

Consistent with the previous recommendation that allows the courts the option of increased sentences of imprisonment for certain repeat sex offenders, this proposed change further recognizes the danger to the community this category of offender poses. Once released from incarceration, an extended period of supervision will better ensure that these offenders do not recidivate.

C. TRANSITION AND TREATMENT

Another serious challenge the State is facing is finding available treatment and resources for incarcerated sex offenders and for transitioning sex offenders back into the community where they need housing, jobs, continued treatment and supervision. Dr. Sue Righthand, who addressed the commission at its first meeting, indicated that a comprehensive treatment plan is necessary for all offenders and works best when it is community-based. Dr. Righthand noted that the success of each offender's intervention plan depends first on a thorough evaluation of each offender. In evaluating offenders, specially trained practitioners must use actuarial and assessment tools and must acknowledge the individual factors in each offender's case. Following an evaluation, those offenders identified as high risk must then take part in a collaborative community based intervention program involving treatment providers and others with professional contact with the offenders in the community. These steps of evaluation and

collaboration must be linked to help increase the likelihood that the offender will follow a coordinated and comprehensive relapse prevention plan and not re-offend.

The commission finds that assigned Sex Offender Specialists within the Department of Corrections must direct the coordination of treatment and intervention efforts that occur in the community, and funds must be made available to compensate private providers for their collaborative planning efforts. Allocation of financial and human resources within the Department of Corrections must recognize and accommodate these needs.

The commission further finds that if the State Forensic Service of the Department of Behavioral and Developmental Services is to provide the above-mentioned evaluations of recently released sex offenders, then resources must be allocated to that end as well. Currently, most adjudicated sex offenders do not receive a professional forensic psychological evaluation. In 1998 the Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators, hereinafter referred to as the 1998 SVP Committee, chaired by Senator Robert Murray of Bangor and Representative Richard Thompson of Naples, recommended that such forensic evaluations occur.²¹

Providing treatment during an offender's incarceration continues to be a goal of the Legislature and the Department of Corrections. Recently, the Department of Corrections received federal money to provide treatment to incarcerated sex offenders over the next three years. A Request for Proposals (RFP) for a treatment provider was issued, and the department received only one response to the RFP. The department also received feedback that the demands of the department could not be met by the funds available. The department plans to modify its plan to provide the most comprehensive treatment services for incarcerated offenders with the funds that it has. Consideration also should be given to provide maintenance of efforts when the federal funds expire in three years.

Although it appears that the institutional program will soon be implemented at some level, currently there are no funds allocated to the process of transitioning offenders back into the community once they leave the institutions. If this gap in services is not addressed, the treatment provided during incarceration will serve little purpose. Each piece of the evaluation and treatment continuum is necessary to increase the likelihood of an accurate identification of an offender's risk, the needed treatment options for that offender and the necessary level of supervision for that offender. Only such a continuous regimen, which melds together all intervention efforts, will best ensure the safety of the community.

Many of the recommendations that the commission makes relating to transition and treatment are not new. The 1998 SVP Committee made many similar recommendations. Revisiting the issues of transition and treatment of sex offenders five years later, this commission finds that many of the same problems continue to exist, as well as new problems imposed by

²¹ The Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators was created by the 118th Legislature through Joint Order, House Paper, 1653. Public Law 1999, c. 788 was adopted pursuant to the study.

legal, community and political tensions. These problems will only continue to increase in severity if attention and resources are not directly allocated to them.

The commission recommends the following regarding transition and treatment of sex offenders.

1. Allocate resources to provide forensic and presentence evaluations for all sex offenders.

The commission makes this unanimous recommendation and emphasizes that it was made first by the 1998 SVP Committee.²² This commission, like the joint select committee, believes that the judiciary and other participants in the criminal justice system must have adequate resources to appropriately and effectively evaluate all sex offenders. An evaluation is the first step in the process to ensure proper treatment and management of an offender, which will ultimately enhance public safety.

The 1998 SVP Committee also recommended that a separate line item be created in the Judicial Department's budget for sex offender evaluations and that adequate funding be provided for the performance of these evaluations, which were to be performed by the State Forensic Service.²³ Finally, that joint select committee recommended that all forensic evaluations be provided to the Department of Corrections.²⁴ This commission recommends that resources be allocated for the purpose of providing evaluations and sharing information among the State Forensic Service, the Judiciary and the Department of Corrections, as well as sharing information among these State agencies and treatment providers in the corrections' system and in the community. Those sharing information must recognize the confidentiality rights of the offender and the federal and state laws and regulations governing clinical practices. Collaboration, communication and funding need to coexist to accomplish this goal of completing initial and follow-up evaluations of offenders.

2. Provide treatment for sex offenders while they are incarcerated and provide prerelease counseling before they return to the community.

The commission unanimously supports the Department of Corrections' effort to provide a treatment program for incarcerated offenders and directs the department to implement the program as soon as possible. The 1998 SVP Committee also recommended that the Department of Corrections "accelerate the creation of sex offender treatment programs to provide various modes of behavior management for sex offenders in order to support the implementation of the committee's proposed legislative initiatives." That joint select committee further directed the Department of Corrections "in its planning to recognize that the characteristics of sex offenders vary, and therefore, numerous modes of treatment are necessary."²⁵ The provision of effective

²² See Final Report of the Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators, October 15, 1998, p.13.

²³ Id.

²⁴ Id.

²⁵ See Final Report of the Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators, October 15, 1998, p.13.

treatment is linked to the evaluation of each offender and the identification of that offender's needs. It is clear that in many cases the sex offender treatment process, including behavior management practices, must begin while the offender is incarcerated and not just when the offender walks out the door of a correctional institution, while recognizing that some offenders, especially those classified as the psychopathic and truly predatory repetitive sex offenders, will likely not experience a positive impact from any treatment.

The commission unanimously recommends that, in addition to early sex offender treatment during incarceration, offenders also need guidance and counseling regarding transition back into the community before they are released. To improve the chances of an offender's successful transition, corrections officials need to aid offenders in securing housing, employment and continued counseling and treatment in the community. Too often offenders are released from prison or county jail without a place to live, work or find required counseling. Although probation officers help offenders in this effort once they are released, continued treatment and successful supervision would be more likely if resources were allocated to the transition before it occurred. Community education efforts also need to occur to reduce some of the myth and needless fear associated with the placement of Maine's sex offenders, who with appropriate intervention and supervision are unlikely to reoffend.

Another issue that must be recognized is the reality that substance abuse often accompanies sexual abuse and is a powerful indicator for recidivism. Collaboration with substance abuse providers is indicated. Designated Sex Offender Specialists and community treatment providers must develop an appreciation of the role that alcohol and drug abuse play in the sexual abuse of children.

3. Create a network of providers, aided by State training and resources, to ensure a collaborative, consistent and up-to-date treatment effort.

The commission unanimously recommends that the State work with treatment providers to ensure that they are available to provide services across the State and that those services are all based on best practices supported by research. The commission recommends that the State reach out to community providers by providing training and resources to them and by encouraging providers to work together. The commission understands that the Department of Corrections has begun to identify acceptable standards for sex offender treatment, and it is the intent of the department to use community corrections resources to provide treatment standards and training to community treatment providers in the next year. This is an important step in the direction of the State supporting the community treatment effort. Holding community providers responsible for creating a network that provides certain services is unrealistic without supporting that effort with necessary resources. The State must step in to support providers with training and additional resources in order to accomplish the creation of a strong and reliable provider network.

In addition to the training aspect of a treatment network, the commission recommends that the State work with providers to create a peer review process. The commission does not believe that a new licensing structure is necessary to accomplish the goal of ensuring the provision of consistent and appropriate use of research-based treatment. Instead, the commission

recommends that, in conjunction with State training and support, treatment providers work together to explore the adoption of a peer review process, perhaps like the model utilized by the State Forensic Service. A collaborative provider network partnered with the State will ensure the continued identification and application of appropriate standards for sex offender treatment.

In addition to looking at Maine-based models like that of the State Forensic Service, the State may also look to other states such as Vermont for its work with community providers and the establishment of standards for sex offender treatment.

D. PROBATION AND SUPERVISION

Consistent and adequate probation and supervision of sex offenders plays an integral role in reducing recidivism and ensuring public safety. Currently, the Department of Corrections has several probation officers called “Sex Offender Specialists” who supervise high-risk offenders in the community. Each Sex Offender Specialist carries a caseload of approximately 40 probationers, which, in comparison to other probation officers, makes it possible for the officers to provide closer supervision and have more contacts with probationers and with probationers’ collateral contacts like employers, family and perhaps most importantly, treatment providers.

Unfortunately, not every sex offender who is sentenced to probation has a Sex Offender Specialist as a probation officer. Currently, Sex Offender Specialists handle only about half of the sex offender probation population. Adequate supervision of those offenders who are not part of the caseload of a Sex Offender Specialist is a major concern.

Considering these observations, the commission makes the following recommendations regarding probation and supervision.

1. Increase the number of Sex Offender Specialists in the Department of Corrections and make the reallocation of probation services for sex offenders the first priority in offender supervision.

The commission unanimously recommends that the State allocate its probation services first to those who most need supervision in the community. The sex offender probation population requires the closest supervision and the most contact standards of all probationers in order to ensure community safety; therefore, current probation resources must be applied to provide adequate supervision of all sex offenders who are probationers. This recommendation is consistent with that made by the 1998 SVP Committee. Specifically, that joint select committee recommended that adequate funding and personnel be provided to ensure the appropriate level of supervision for sex offenders on probation and supervised release. The effectiveness of that committee’s expansion of sentencing alternatives was dependent upon the adequate allocation of supervision resources.²⁶ This commission strongly encourages an immediate reallocation of human resources within the Department of Corrections as the most effective current option, given the lack of resources available.

²⁶ See Final Report of the Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators, October 15, 1998, p.13.

The commission further unanimously recommends that the State use Sex Offender Specialists to supervise all sex offenders identified through evaluation as high-risk. Sex Offender Specialists have brought uniformity to supervision and to counseling that did not previously exist, and probation officers who carry caseloads of up to 200 probationers cannot effectively supervise this high-risk population. For these reasons, the commission recommends that the State's first priority in allocating probation services be to sex offenders.

2. Encourage continued communication and collaboration among probation officers, sex offender treatment providers and law enforcement officers.

The commission heard the same message from law enforcement officers, treatment providers and probation officers. That message was that each of these three groups plays a crucial role in developing and successfully implementing relapse prevention plans for sex offenders and for providing community safety and public education. Elements of this cooperative effort occur now, and the commission would like to encourage that this positive practice continue. Community education efforts also need to occur within selective leadership groups and the general population. The commission unanimously supports a continued collaborative effort that includes providers, law enforcement, probation personnel and victim advocates.

E. REGISTRATION

The Sex Offender Registration and Notification Act of 1999 sets up state guidelines for those who must register with the Maine State Police, State Bureau of Identification (SBI) and for how long persons must register.²⁷ Currently, the act requires that within 10 days of an offender establishing a domicile in the State after that offender's release from jail or prison, or if no period of incarceration is to be served directly after sentencing, that offender must register with the SBI. The SBI's registry maintains at least the following personal information on each registrant: name, aliases, date of birth, sex, race, height, weight, eye color, mailing address, home address or expected domicile; place of employment, place of college or school being attended and the addresses of employment and school; an offense history; notation of any treatment received for a mental abnormality or personality disorder; a photograph and set of fingerprints; a description of the offense for which the offender was convicted, the date of the conviction and the sentence imposed; and any other information that the SBI determines important.²⁸

Under Maine's current law, at the time of sentencing the court determines whether a person is a "sex offender,"²⁹ who must register for 10 years, or a "violent sexual predator,"³⁰ who must register for life. Federal guidelines³¹ require a 10-year minimum registration period for certain sex offenders and lifetime registration for those who commit "aggravated offenses" or those who have prior convictions for offenses for which registration is required. "Aggravated offenses" refer to state offenses comparable to the federal crime of "aggravated sexual abuse,"

²⁷ 34-A MRSA c. 15, subc. II.

²⁸ 34-A MRSA §11221.

²⁹ 34-A MRSA §11203, sub-§§5-6.

³⁰ 34-A MRSA §11203, sub-§§7-8.

³¹ See Department of Justice Federal Register, Vol. 64 No.2, Tuesday, January 5, 1999.

defined in 18 United States Code §2241, which includes engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence or engaging in sexual acts involving penetration with victims under 12. Once a court determines that a person is required to register for 10 years or for life, that registration requirement cannot be terminated or amended, unless the underlying conviction is reversed, vacated or set aside or unless the registrant receives a pardon.

In discussing registration requirements, the commission focused on many issues, including whether Maine’s crimes were properly categorized as requiring 10-year registration or lifetime registration, whether the terms used in statute to classify offenders are accurate and useful, whether registration verification requirements could be amended to be less repetitive³² and whether the registration process is efficient. The commission also discussed how to manage registrants who establish domiciles outside of Maine and whether local law enforcement agencies should receive additional funds for their registration work.

The commission makes the following recommendations regarding registration.

1. Rename the current SORNA registration categories “sexually violent predators” and “sex offenders” to “lifetime registrants” and “10-year registrants.”

The commission spent a great deal of time discussing who is required to register and what offenses mandate a lifetime registration requirement. The members unanimously agreed to rename the categories of registrants. The commission believes that it makes sense to remove labels that may be inaccurate, misleading, inflammatory and damaging. In making this recommendation, the commission concluded that there is no way to distinguish by the label alone a “sexually violent predator” who may be a violent psychopathic offender from an offender who committed a registerable offense but is not violent and does not pose a high risk of reoffending to the community. There are also offenders who come to Maine from other states and have to register for life in their previous state, but the crime for which they must register there does not have elements that would make it fall within our requirements for lifetime registration; therefore, out-of-state offenders may also be inaccurately and unfairly grouped with our “sexually violent predators.”

To address these concerns, the commission finds that providing public notice and preventing hysteria are both important. To accomplish this, for purposes of registration, the commission recommends using the terms “10-year registrants” for offenders required to register for 10 years and “lifetime registrants” for offenders required to register for life.

The commission recognizes that these categories may not necessarily provide sufficient information for purposes of notification. Therefore, additional information that better explains the level of risk an offender may pose to the community is appropriate in notification procedures. (See **F. NOTIFICATION** below.)

³² Pursuant to 34-A MRSA §11222, sub-§4, SBI must verify a sexually violent predator’s domicile every 90 days after that offender’s initial registration date. Sexually violent predators must register for life.

2. Move Class D and Class E offenses that currently require lifetime registration as “sexually violent predators” under the SORNA of 1999 to the list of offenses requiring 10-year registration for “sex offenders.”

The federal government does not give states a great deal of leeway in determining what offenses persons must register for and for how long they must register. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act set minimum standards for state registration programs. The original requirements of the Act included: registering offenders for 10 years, taking registration information from offenders and educating offenders about when and how to register and update and verify registration information and releasing registration information as necessary for public safety. The Jacob Wetterling Act was amended by the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, which expanded registration requirements by mandating serious offenders and recidivists to register for life. The Jacob Wetterling Act was again amended by the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act of 1998 (CJSA), which provided states with some flexibility and discretion concerning procedures to be used for registration verification. The CJSA also added requirements to register offenders in states where they work or attend school, in addition to registering their place of domicile.

Although the guidelines are quite clear regarding minimum requirements, the commission carefully reviewed the SORNA and Maine’s sex offenses and determined that a strict reading of the elements of some of Maine’s crimes compared to the federal guidelines indicated that there is room for some adjustment. Some of the offenses Maine currently lists under lifetime registration requirements do not require lifetime registration under the federal law. To address this issue, the commission unanimously recommends that all offenders who commit Class D or E sex offenses be required to register for only 10 years.

3. Request that the Criminal Law Advisory Commission(CLAC):³³

- a. Review the Sex Offender Registration and Notification Act of 1999 to identify all crimes of gross sexual assault and unlawful sexual contact that currently do not require any registration;**
- b. Assess whether the current Maine crimes listed as sex offenses and sexually violent offenses are appropriate under the Federal Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended; and**
- c. Report its findings and any proposed changes to the Joint Standing Committee on Criminal Justice and Public Safety by March 1, 2004.**

The commission unanimously recommends that CLAC be asked to identify those crimes of gross sexual assault and unlawful sexual contact that are not registerable sex offenses under the SORNA of 1999, to review and assess the appropriateness of the current list of offenses that are registerable and to report to the Committee on Criminal Justice and Public Safety by March

³³ See Title 17-A MRSA, chapter 55.

1, 2004 whether it believes changes should be made to the registration statute. In addition to proposing to amend the SORNA of 1999 so that all registerable misdemeanor offenses have a 10-year registration requirement, the commission discussed other possible changes to the registration provisions. However, the commission believes that further review of the current law is necessary before additional changes are proposed, and the commission believes that CLAC is an appropriate body to review the law and provide further guidance to the Legislature.

4. Make technical drafting changes to the Sex Offender Registration and Notification Act (SORNA) of 1999, including:

- a. Adding to the list of registerable offenses the former crime of rape,³⁴ restoring the former crimes of unlawful sexual contact³⁵ and solicitation of child by computer to commit a prohibited act³⁶ and moving from the definition of “sex offense” to “sexually violent offense” the crimes of unlawful sexual contact that involve penetration;³⁷**
- b. Making registration requirements consistent by removing from the crime of “kidnapping” the defense that the actor is a parent, which is consistent with the crime of criminal restraint for purposes of sex offender registration; and**
- c. Defining the terms “another state,” “registrant,” “jurisdiction” and “tribe” to be more consistent with federal law.**

The former crime of rape, 17-A MRSA §252, was repealed before the SORNA of 1999 was enacted, and rape should be added to the list of “sexually violent offenses.” Solicitation of child by computer to commit a prohibited act, 17-A MRSR §259, and unlawful sexual contact, 17-A MRSA §255, were inadvertently left out of the list of registerable offenses when other technical drafting changes were made pursuant to Public Law 2001, chapter 383. Federal law also requires that offenses involving penetration be registerable as lifetime offenses, making it appropriate to categorize those unlawful sexual contact offenses involving penetration as “sexually violent offenses.” Adding and restoring these crimes to the lists of registerable offenses is consistent with public policy, which supports the registration of these types of prohibited acts.

It is a defense to prosecution for kidnapping under 17-A MRSA §301 that the person restrained is the child of the actor. Currently, the registration requirements list the crime of kidnapping, unless the actor is a parent of the victim, as a registerable “sex offense.”³⁸ A parent cannot be convicted if the parent raises this defense, so the reference to the defense does not need to remain in the definition for sex offenses. The commission recommends that the defense be repealed, which would make kidnapping consistent with the crime of “criminal restraint” in the definition of “sex offense” in 34-A MRSA §11203, sub-§6.

³⁴ 17-A MRSA §252.

³⁵ 17-A MRSA §255.

³⁶ 17-A MRSA §259.

³⁷ See 17-A MRSA §255, sub-§3.

³⁸ “Sex offense” is defined in 34-A MRSA §11203, sub-§6.

Finally, the commission recommends redefining the term “state,” “registrant,” “jurisdiction” and “tribe” for purposes of the SORNA of 1999 to clarify that the reference does not include jurisdictions outside this country, which is consistent with federal law.

The commission unanimously supports all proposed technical corrections.

5. Authorize Maine to suspend the requirement that a sex offender or sexually violent predator register during any period in which the registrant leaves the State, establishes a domicile in another state and remains physically absent from the State.

Currently the SORNA of 1999 does not specify that Maine’s responsibility for tracking registered sex offenders is tolled when a sex offender establishes a domicile in another state. The State is now attempting to track sex offenders as they move from state to state, but obtaining information from these other states is difficult, if not impossible at times. The State recognizes its responsibility to track all sex offenders domiciled, employed or attending school in Maine and its responsibility to provide required registration information to any receiving state in which the registered offender is establishing a new domicile. The commission agrees that continuing to track an offender once that offender is domiciled in another state is challenging, uses resources better used to track those within Maine and does not serve immediate public safety interests of the people of this State. Therefore, the commission unanimously recommends that once an offender is domiciled in another state, is not attending school or working here and remains physically absent from the State, Maine may suspend that registrant’s responsibility to register during that period. The duty to register would apply when that offender again returns to the state of Maine to reside, work or attend school.

6. Increase from \$25 to \$30 the sex offender and sexually violent predator fee for initial registration and annual renewal registration.

The SBI collects \$25 from all sex offenders at initial registration and on an annual basis thereafter.³⁹ Of the \$25 collected, \$5 is distributed to the law enforcement agency that conducts the fingerprinting and processing for the initial registration. The remaining \$20 is credited to the General Fund and the Highway Fund in an amount consistent with currently budgeted appropriations and allocations. In an effort to provide local law enforcement agencies with adequate compensation for their work, the majority of the commission recommends increasing the fee to \$30, so that the law enforcement agency that conducts the fingerprinting and processing for the initial registration receives \$10 of the fee. Two members of the commission oppose this recommendation.

7. Refer back to the Joint Standing Committee on Criminal Justice and Public Safety the issue regarding the 10-day time requirement in which a sex offender must verify registration information or a change in registration information with the State Bureau of Identification as described in LD 617, An Act Amending the Time by Which a Sex Offender or Sexually Violent Predator Must Register.

³⁹ 34-A MRSA §11226.

During the First Regular Session of the 121st Legislature, the Joint Standing Committee on Criminal Justice and Public Safety carried over LD 617, An Act Amending the Time by Which a Sex Offender or Sexually Violent Predator Must Register. This bill proposed to reduce from 10 days to 48 hours the time within which a sex offender or sexually violent predator must register with the Department of Public Safety, State Bureau of Identification to comply with the Sex Offender Registration and Notification Act of 1999.

The commission discussed this bill and a proposed compromise that was discussed by the Department of Public Safety and advocates during legislative work sessions on the bill. The compromise proposal was to reduce from 10 days to 5 days (instead of 48 hours) the time to register or verify registration with the SBI. Although this proposal sounded reasonable to the commission, the commission unanimously believes that this issue would be more appropriately addressed by the legislative committee of jurisdiction.

F. NOTIFICATION

The Sex Offender Registration and Notification Act of 1999 sets up state guidelines for notification to law enforcement and the public regarding the release of sex offenders.⁴⁰ The current steps in the notification process direct the Department of Corrections, county jails and state mental health institutes to give the SBI notice of a sex offender's address of residence, work and school upon the offender's conditional release or discharge.⁴¹ Upon receiving this information from the releasing correctional facility, the SBI shall then forward the information to all law enforcement agencies that have jurisdiction in those areas where the offender may reside, work or attend school.⁴² Once a law enforcement agency receives this information, the agency shall then give notice to "members of the public the department determines appropriate to ensure public safety."⁴³ Although the notification directive to law enforcement is mandatory in nature, it leaves to the discretion of the agency to whom the information should actually be provided. The statute also is silent as to how the information should be distributed or shared.

Historically, the Legislature has recognized and supported the importance of public notification. At the same time, the Legislature has recognized that communities across the State are unique and specific notification guidelines may work well in one community but not in another, depending on the population and the geographic layout of the community. The Department of Corrections and the Attorney General have worked with law enforcement agencies to explain the notification law and general notification procedures. However, due to the lack of specificity in the statute, the commission finds that law enforcement agencies' approaches to notification are very inconsistent across the State. Some agencies may publicly post all offenders' pictures and knock on many doors, while other agencies may not provide any active notification in their communities. According to public testimony heard by the commission, some law enforcement officers do not know what information that they can share with the public. The commission supports giving law enforcement more guidance in regard to notification procedures. The commission also believes that all law enforcement officers need

⁴⁰ 34-A MRSA c.15, subc.III.

⁴¹ 34-A MRSA §11254.

⁴² 34-A MRSA §11254.

⁴³ 34-A MRSA §11255.

proper training to ensure that they understand what information may be shared with the public and how it can be shared.

Finally, the commission finds that the State, including law enforcement officers, corrections personnel and advocates can work cooperatively to better educate the public about registration, notification and release of sex offenders back into the community.

Based on these discussions, the commission makes the following unanimous recommendations related to community notification and education.

- 1. Request the Maine Chiefs of Police Association, in cooperation with Sexual Assault Response Teams (SARTs) and sexual assault crisis centers, to draft a model public notification policy that will be added to the list of mandatory law enforcement policies for which agencies must report their implementation and training to the Board of Trustees of the Maine Criminal Justice Academy.**

Developing and implementing a model notification policy with minimum standards for all law enforcement agencies will ensure that all communities receive some level of notification and will clarify what information law enforcement officers can share with the public and what methods they can use to distribute the information. The commission wishes to address the huge inconsistencies in notification practices, but recognizes the differences in communities and their needs. For this reason, the commission unanimously recommends that Sexual Assault Response Teams (SARTS) and sexual assault crisis centers work with the Maine Chiefs of Police Association in the development of the policy, as well as the implementation and public education component later. A collaborative effort will ensure that the minimum policy addresses public safety needs. The commission further unanimously recommends that the new policy be added to the list of mandatory policies for which law enforcement agencies must annually report to the Board of Trustees of the Maine Criminal Justice Academy. This step will provide consistency in the timing of the implementation of the notification process across the State.

- 2. Strongly encourage local law enforcement agencies that maintain a public web site to provide a link to the state Sex Offender Registry⁴⁴ and strongly discourage those same law enforcement agencies from providing public access to individual agencies' own sex offender registries.**

On December 1, 2003 the public obtained Internet access to the Maine Sex Offender Registry Search. The Sex Offender Registry Web Site is maintained by the Maine State Police, State Bureau of Identification (SBI) and is intended to provide the public with information concerning the location of registered offenders currently within Maine. The information provided on this web site is intended for public safety and community awareness purposes only. Because the registration information is updated on a daily basis to reflect the most current information on file with the SBI, the registry is the most accurate record of those offenders who must register in this State.

⁴⁴ <http://www4.informe.org/sor/>

Currently, a number of local law enforcement agencies maintain their own sex offender registries for internal use and for public access. The commission believes that since the Maine Sex Offender Registry Search is fully implemented and operational, public Internet access to other local registries may be confusing and may provide inaccurate information to the public. Since those local registries will not necessarily be updated daily with the most recent offender information maintained and entered by the SBI, public access to the information may pose a liability for the agencies. However, the commission also recognizes the importance of law enforcement agencies maintaining internal registries for purposes of their own local awareness in order to provide supervision of and notification regarding offenders in their communities. Therefore, the commission unanimously encourages law enforcement agencies and other governmental agencies that have web sites to provide a link to the Maine Sex Offender Registry Search and to use their own individual registries for internal agency use only.

APPENDIX A

**Authorizing Legislation
Resolve 2003, c. 75**

APPENDIX B

Membership list

**Commission to Improve Community Safety and
Sex Offender Accountability**

APPENDIX C

Legislation Proposed by the Commission

APPENDIX D

Presentation by Dr. Sue Righthand

APPENDIX E

Summary of Comments from Presentations and Public Hearing

APPENDIX F

NCSL Sexual Assault on Child Chart

APPENDIX G

Survey of Convicted Sex Offenders in the State of Maine