



STATE OF MAINE
SEX OFFENDER MANAGEMENT AND RISK
ASSESSMENT ADVISORY COMMISSION

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March 3, 2023

Re: L.D. 115 – An Act to Protect Minors from Exploitation by Adults for Violation of Privacy

Senator Beebe-Center, Representative Salisbury and members of the Joint Standing Committee on Criminal Justice and Public Safety:

I am writing on behalf of the Sex Offender Management and Risk Assessment Advisory Commission in opposition to LD 115. The bill as written would cause a new and fundamental change in the nature of the Maine Sex Offender Registry (“SOR”) and cause unintended consequences which will have a considerable collateral effect on those convicted of this newly proposed subsection.

Although the commission takes no position on whether sub-section E should be enacted, we do object to a conviction being defined as a Tier I offense pursuant to SORNA 2013, 34-A M.R.S.A. §11271-§11304. In addition to our substantive objections below, it should be preliminarily noted that per the language of SORNA 2013, any Class C offense is defined as a Tier II offense (25-year registration) and cannot be defined as a Tier I offense (10-year registration) without altering the basic definitions and structure of SORNA 2013. It should also be noted that any additions of registerable offenses to SORNA 2013 should also be made to the other currently operative registry statute, SORNA 1999, 34-A M.R.S.A. §11201-§11256, which is not included in the language of the current bill.

Historically, Maine’s Sex Offender Registry has been limited to those convicted of sex offenses. LD 115 would transform Maine’s registry from strictly a sex offender registry to a hybrid registry containing non-sexual offenses, running the risk of stigmatizing those convicted of non-sexual offenses as sex offenders, potentially for 25 years. Although other states have such hybrid registries, Maine never has, and if it is now being considered should be studied before being enacted into law. Although there have been some recent attempts in the past few years to add non-sexual offenses to the current registry, or create separate new registries, all have failed.

To give an example of a non-sexual violation that would result in sex offender registration, under LD 115 if a student or parent were to commit a civil trespass to listen in on the opposing high school team's locker room to get team plays and overheard someone who was 15 years of age, they would have to register as a sex offender. For further context, one should keep in mind that unlawful sexual touching (touching of breasts or buttocks) is not registerable under any circumstances.

Finally, the commission feels that the exclusion for violators that are less than 5 years older than the victim is not justified in this context and should be eliminated. If it were to remain, an 18-year-old high school senior could observe or surveil a 14-year-old high school freshman without violating the statute.

The commission is happy to assist the committee or the sponsor in drafting more workable language for this bill and will be available for any work sessions. If it's the intent of the sponsor to protect the public from both sexual and non-sexual invasions of privacy, the commission recommends that the language in sub-section E be broken down into two subsections, one sexual (registerable) and one non-sexual (not registerable). The difference being that to commit the sexual offense, the perpetrator must have committed the offense "for the purpose of arousing or gratifying sexual desire." This language is currently used in other sex offense statutes. *See* 17-A M.R.S.A. §256 (visual sexual aggression against child); 17-A M.R.S.A. §251 (definitions of "sexual act"; "sexual touching"); 17-A M.R.S.A. §506 (harassment by telephone).

In closing, the commission does not object to the overall purpose of the bill, but rather to those provisions which seek to make non-sexual offenses registerable pursuant to SORNA as well as other technical and language changes that are necessary to improve the bill.

Kent Avery
Chair, Sex Offender Management and Risk Assessment Advisory Commission