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## 2012 Sexual Assult Legislation in Review

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*Maine Coalition against Sexual Assault*

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## 2012 SEXUAL ASSAULT LEGISLATION IN REVIEW



STATEWIDE SEXUAL ASSAULT CRISIS & SUPPORT LINE

TOLL FREE: 1.800.871.7741 or TTY: 1.888.458.5599

# Highlights of Key Legislation

The 125<sup>th</sup> Second Regular Session was a successful one for MECASA. With our many partners, we assisted in the passage of some significant improvements to Maine's laws and defeated bills that would have been detrimental to victims/survivors of sexual violence and to public safety. We are deeply grateful for the work of all of our partners and allied legislators which made these successes possible.

Of particular note this past session were significant changes to Maine's Sex Offender Registration and Notification Act, resulting from years of examination by the Criminal Justice and Public Safety Committee of the current tiering system as well as other issues. Changes include a prospective creation of a three-tier classification system which continues to group offenders by conviction data. In general, it places offenders who committed Class E and D crimes into Tier I, Class Cs into Tier II, and Bs and As into Tier III. Tier I offenders must register for 10 years, Tier II for 25, and Tier III for life. The new law also creates the Sex Offender Risk Assessment Advisory Commission, which is required to study risk assessment and recidivism, to consider additional ways risk assessment might be utilized in the management of sex offenders in Maine, and to make recommendations which reflect its findings to the next legislature.

In addition this past this session, a law was passed which would remove some of the loopholes related to the methods used by offenders to "solicit" children. The new law creates a crime of verbally soliciting a child to commit a prohibited sexual act and makes it a crime to solicit a child by any means for the purpose of engaging in a prohibited sexual act, not just by computer as was previously true. Also this session, the legislature created The Task Force on the Prevention of Sexual Abuse of Children. We are currently waiting for the Senate President and Speaker of the House to make appointments to this task force that will research child sexual abuse and make recommendations with regard to preventing it.

Also of note were changes to the Protection from Harassment Statute, as well as changes to address methods used in commercial sexual exploitation. If you have any questions about any of these new laws (or others) please feel free to contact us.

The following pages include summaries of the new laws which are of particular interest to MECASA.

# Bills Passed

## L.D. 1237/Public Law Chapter 659: An Act To Prohibit Bullying and Cyberbullying in Schools

*Sponsors: Rep. Terry Morrison and Sen. Philip Bartlett II*

Public Law 2011, chapter 659 requires the Commissioner of Education to develop a model policy on bullying and cyberbullying in accordance with the requirements set forth in the Maine Revised Statutes, Title 20-A, section 6554 by January 1, 2013. The law accomplishes the following.

1. It defines "bullying" to include cyberbullying and establishes a prohibition on bullying to ensure a safe and secure student learning environment in public schools in the State.
2. It provides that when a school board revises the school administrative unit's existing policies and procedures established to address bullying pursuant to the Maine Revised Statutes, Title 20-A, section 1001, subsection 15, the school board shall adopt a policy that is consistent with the provisions established to prohibit bullying at school or on school grounds, including cyberbullying that takes place at school or elsewhere through the use of technology.
3. It provides that the policy adopted by a school board to address bullying must include the following provisions:
  - A. The responsibility of the superintendent or the superintendent's designee to implement and enforce the policy;
  - B. The requirement that school staff members, including persons involved with extracurricular or co-curricular activities, report incidents of bullying;
  - C. The procedures for students, school personnel, parents, legal guardians and others to report incidents of bullying;
  - D. The procedures for promptly investigating and responding to incidents of bullying, including communicating measures to ensure the safety of a targeted student and prevent further acts of bullying;
  - E. A statement of the disciplinary actions that a person who engages in bullying may be subjected to, including the imposition of a series of graduated consequences that include alternative discipline practices;
  - F. A procedure, consistent with the school board's other appeals procedures, to appeal the decision of a school principal or superintendent's designee involving disciplinary action taken or not taken against a person who engages in bullying; and
  - G. A statement that communication with law enforcement officials is permitted if a school principal or superintendent's designee believes that the pursuit of civil action or criminal charges is appropriate.
4. It requires a school board to disseminate its policies to address bullying, including posting the policies on the school administrative unit's publicly accessible website and incorporating details of the policies in the student handbook.

5. It provides that a superintendent or the superintendent's designee is responsible for ensuring that every substantiated incidence of bullying is addressed.

6. It provides that each school administrative unit shall file its policies to address bullying with the Department of Education and requires the Commissioner of Education to create a procedure for reporting incidents of bullying and cyberbullying to the department on at least an annual basis.

7. It provides that a school administrative unit shall provide professional development and staff training in the best approaches to implementing its policies to address bullying.

## **L.D. 1514/Public Law Chapter 663: An Act To Amend the Sex Offender Registration Laws**

*Sponsors: Rep. Anne Haskell & Sen. Stan Gerzofsky*

Public Law, 2011, chapter 663 creates the Sex Offender Registration and Notification Act of 2013 (SORNA 2013), which is applicable only to a person who commits certain criminal sexual conduct and is sentenced for that conduct on or after January 1, 2013.

Public Law 2011, chapter 663 does the following.

1. It creates a three tier classification system for the placement of offenders on the new sex offender registry based on the classification of the crime. In general, Class E and Class D crimes are Tier I offenses, Class C crimes are Tier II offenses and Class B and Class A crimes are Tier III offenses. The registration requirement for each tier is 10 years, 25 years, and life, respectively. A registrant who commits a subsequent offense must register for life.

2. It imposes a duty on an offender to register when that offender is notified to do so by the court of jurisdiction, the Department of Public Safety or a law enforcement agency. The Department of Public Safety, the county jail, or the state mental health institute that has custody of the offender must inform the offender, prior to release, of the duty to register.

3. It directs the Department of Public Safety, State Bureau of Identification (bureau) to establish and maintain a registry database of registrants under SORNA 2013 that includes, but is not limited to: the physical characteristics of the registrant; a description of the offense; the registrant's offense history, mailing address, places of employment, places of schools being attended, photograph, fingerprints, telephone numbers, Internet identifiers, driver's license, professional licenses, passport, immigration documents, social security number, temporary lodging and dates of travel both domestic and abroad, and vehicle information. It allows the bureau to provide information in the registry database to a national or regional registry and to the Department of Public Safety and applicable law enforcement and criminal justice agencies.

4. It directs the bureau to post on the Internet for public consumption photographs of the registrant, in addition to a registrant's name, date of birth, town or city where that registrant resides, place of employment and schools the registrant attends. It also directs the bureau to post statutory cites for registrant's offense, the applicable tier level in the classification system, the frequency with which the registrant must verify that registrant's information in the registry, and the registrant's address and its location on a map.
5. It requires the bureau to establish an email notification system to alert a member of the public who has subscribed to the email notification system when a registrant moves into the subscriber's geographic area.
6. It requires a registrant to verify the accuracy of the registrant's information every 90 days for a Tier III registrant, every 180 days for a Tier II registrant, and annually for a Tier I registrant. The bureau may suspend the verification requirements if the registrant leaves the state, establishes a residence in another state and remains physically absent from this State, or is incarcerated.
7. It provides that a registrant must notify the bureau of a change of residence, place of employment, or college or school the registrant attends within 3 days.
8. It authorizes the bureau to charge a \$25 annual fee to a person required to register.
9. It makes it a crime for a person to fail to comply with the provisions of SORNA 2013.
10. It requires the Department of Public Safety to provide law enforcement agencies with technical assistance regarding community education about the conditional release or discharge of a registrant.
11. It creates the Sex Offender Risk Assessment Commission to study the methods that may be used to predict the risk of recidivism by a sex offender and develop a method that may be used for such purposes.
12. It directs the Sex Offender Risk Assessment Advisory Commission to study the structure and duties of Colorado's Sex Offender Management Board and report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters by January 5, 2013. It authorizes the committee to introduce a bill implementing the commission's recommendations to the First Regular Session of the 126th Legislature.

**L.D. 1673/Public Law Chapter 597: An Act To Prohibit the Sexual Solicitation of a Child by any Means**

*Sponsor: Sen. Barry Hobbins*

Public Law 2011, chapter 597 repeals the law that makes it a crime to solicit a child by use of a computer and provides that a person may not solicit a child by any means for the purpose of engaging in a prohibited sexual act.

Public Law 2011, chapter 597 was enacted as an emergency measure effective April 6, 2012.

**L.D. 1705/Resolve 162: Resolve, To Create the Task Force on the Prevention of Sexual Abuse of Children**

*Sponsors: Rep. Joyce Maker & Sen. Kevin Raye*

Resolve 2011, chapter 162 establishes the Task Force on the Prevention of Sexual Abuse of Children. The resolve directs the task force to research issues regarding child sexual abuse in Maine and to recommend policies to address those issues. The policies may include age-appropriate curricula for schoolchildren from prekindergarten to grade 5 and methods to increase teacher, student and parent awareness of the issues regarding child sexual abuse. The task force is also directed to submit a report by November 7, 2012, to the joint standing committee of the Legislature having jurisdiction over health and human services matters, and the joint standing committee is authorized to submit legislation to the First Regular Session of the 126th Legislature based on that report.

Resolve 2011, chapter 162 was passed as an emergency measure effective April 21, 2012.

**L.D. 1711/Public Law Chapter 680: An Act To Adopt the Use of Standardized Risk Assessment in the Management of Domestic Violence Crimes**

*Sponsors: Rep. Emily Ann Cain & Sen. Jonathan Courtney*

Public Law 2011, chapter 680 provides that in cases involving suspected or alleged domestic violence or abuse, law enforcement officers use a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse and approved by the Department of Public Safety.

It requires the law enforcement officer to transmit the results of the assessment to the bail commissioner, if appropriate, and the district attorney for the county in which the suspected or alleged domestic violence or abuse took place.



Public Law 2011, chapter 680 requires a probation and parole or intensive supervision program officer to make a good faith effort to supplement any other assessment tool for domestic violence offenders with the domestic violence risk assessment and to implement protocols to override risk assessment scores based on the presence of higher risk factors.

It also provides state, municipal, and county officials and employees with immunity from civil liability for implementing or failing to implement the risk assessment.

**L.D. 1731/Public Law Chapter 672: An Act To Combat Human Sex Trafficking**  
*Sponsor: Sen. Bill Diamond*

Public Law 2011, chapter 672 amends the crime of aggravated promotion of prostitution to provide a number of other examples of behavior engaged in or actions taken, such as confiscating a person's passport or threatening to have a person deported, for the purpose of compelling that person to engage in or continue to engage in prostitution. Aggravated promotion of prostitution is a Class B crime.

**L.D. 1760/Public Law Chapter 639: An Act To Ensure Notification to Victims of Domestic Violence, Sexual Assault and Stalking When Defendants Are Released on Bail**  
*Sponsor: Rep. Alan Casavant*

Public Law 2011, chapter 639 provides that in a case of domestic violence, sexual assault or stalking the arresting law enforcement officer must obtain the victim's contact information and provide it to the jail where the defendant is delivered. It requires the jail to notify the victim when the defendant is released on preconviction bail or, if the victim cannot be reached, to notify the arresting law enforcement agency, which must make a reasonable effort to contact the victim. If the defendant is released on bail before being delivered to a jail, the arresting law enforcement agency must notify the victim.

Public Law 2011, chapter 639 requires that notification of a defendant's release on preconviction bail be made directly to an adult victim and to a parent or legal guardian or other immediate family member in the case of a minor victim unless the jail or law enforcement agency reasonably believes that it is in the best interest of the minor victim to be notified directly.

Public Law 2011, chapter 639 also provides the State, the arresting law enforcement agency, the jail where the defendant was delivered, and the Department of Corrections immunity from liability in a civil action for compliance or noncompliance with the new provisions.



## L.D. 1802/ Public Law Chapter 559: An Act To Implement Recommendations of the Commission To Study Priorities and Timing of Judicial Proceedings in State Courts

*Sponsor: Judiciary Committee*

Public Law 2011, chapter 559 is based on the recommendations of the Commission to Study Priorities and Timing of Judicial Proceedings in State Courts.

Part A replaces varied statutory language regarding the priority of cases in court dockets with uniform language in statutes dealing with issues including civil appeals to Superior Court, animal welfare, the Maine Labor Relations Board, administrative licenses and other miscellaneous civil provisions.

Part B eliminates a provision regarding speedy trials for those arrested for traffic infractions, as it is duplicative.

Part C amends the protection from harassment statutes. It adds the commission's proposed uniform language to the provision regarding dissolution or modification of protection from harassment orders. It amends the definition of "harassment" by limiting damage to property to only personal property and by repealing language describing harassment as 3 or more acts that are made with the intent to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution of Maine or the United States Constitution. It repeals as unnecessary a provision regarding whether reasonable efforts have been made by the court to give written or oral notice to a defendant in a hearing regarding an allegation of harassment, which is a criterion as to whether the court may enter a temporary protection from harassment order. It also amends the process of seeking a protection from harassment order by requiring that if the alleged harassment does not meet the definition of "harassment" in the Maine Revised Statutes, Title 5, section 4651, subsection 2, paragraph C, the plaintiff must seek and file a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, section 506-A or a statement of good cause why a notice was not sought or obtained. Notice under Title 17-A, section 506-A is not required in cases related to allegations of domestic violence, violence against a dating partner, sexual assault, and stalking. These are facts already identified by the court as important in hearing complaints seeking protection from harassment orders.

**L.D. 1841/Public Law Chapter 628: An Act To Ensure Funding for the Victims'  
Compensation Fund**

*Sponsors: Rep. Kenneth Wade Fredette & Sen. Roger Katz*

Public Law 2011, chapter 628 prohibits a court from waiving the assessment of \$25 on a person convicted of murder or a Class A, Class B, or Class C crime and \$10 on a person convicted of a Class D or Class E crime.

*The chapter law summaries included in this report (unless otherwise noted) were obtained through the Maine Legislature's Office of Policy and Legal Analysis. More information can be found at <http://www.maine.gov/legis/opla>.*