

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 1156

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H. P. 943

House of Representatives, March 22, 1977

Referred to the Committee on Judiciary. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Laffin of Westbrook.

Cosponsors: Mr. MacEachern of Lincoln, Mr. Tozier of Unity and Mr. Cote of Lewiston.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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AN ACT to Reinstate the Death Penalty.

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 15 MRSA c. 301, sub-c. V is enacted to read:

SUBCHAPTER V

EXECUTION OF SENTENCE OF DEATH

§ 1851. Transfer to State Prison

When a person is sentenced to death, the judgment of the court shall direct the sheriff of the county in which the trial was had to cause the person to be removed from the county jail to the State Prison. Unless otherwise directed by an appropriate court order, the person shall be kept in the State Prison pending the review of the sentence by the Supreme Judicial Court.

§ 1852. Issuance of warrant by Governor

When a person has been sentenced to death, and the sentence has been reviewed and affirmed by the Supreme Judicial Court, the clerk of the trial court shall prepare a certified copy of the record of the judgment, and the sheriff shall transmit the record to the Governor. The sentence shall not be executed until the Governor issues a warrant, attaches it to the copy of the record, and transmits it to the warden of the State Prison, directing him to execute the sentence at a time specified in the warrant.

**§ 1853. Stay of execution of death sentence**

The execution of a death sentence may be stayed only by the Governor or incident to an appeal or collateral proceeding.

**§ 1854. Proceedings when person sentenced to death appears to be mentally ill**

1. Examination by psychiatrists. When the Governor is informed that a person under sentence of death may be mentally ill, he shall stay execution of the sentence and appoint a commission of 3 psychiatrists to examine the convicted person. The Governor shall notify the psychiatrists in writing that they are to examine the convicted person to determine whether he understands the nature and effect of the death penalty and why it is to be imposed upon him. The examination of the convicted person shall take place with all 3 psychiatrists present at the same time. Counsel for the convicted person and counsel for the State may be present at the examination. If the convicted person does not have counsel, the court that imposed the sentence shall appoint counsel to represent him.

2. Issuance of warrant. After receiving the report of the commission, if the Governor decides that the convicted person has the mental capacity to understand the nature of the death penalty and the reasons why it was imposed upon him, he shall issue a warrant to the warden directing him to execute the sentence at a time designated in the warrant.

3. Committed to mental health institute. If the Governor decides that the convicted person does not have the mental capacity to understand the nature of the death penalty and why it was imposed on him, he shall have him committed to a state mental health institute.

4. Determination of sanity. When a person under sentence of death has been committed to a state mental health institute, he shall be kept there until the proper official of the institute determines that he has been restored to sanity. The institute official shall notify the Governor of his determination and the Governor shall appoint another commission to proceed as provided in subsection 1.

5. Appointment of psychiatrists. The Governor shall allow reasonable fees to psychiatrists appointed under this section, which shall be paid by the State.

**§ 1855. Proceedings when person sentenced to death appears to be pregnant**

1. Examination by physician. When the Governor is informed that a person under sentence of death may be pregnant, he shall stay execution of the sentence and appoint a qualified physician to examine the convicted person and determine if she is pregnant.

2. Issuance of warrant after report of the physician. After receiving the report of the physician, if the Governor determines that the convicted person is not pregnant, he shall issue a warrant to the warden directing him to execute the sentence at a time designated in the warrant.

3. Issuance of warrant due to no longer being pregnant. If the Governor determines that a convicted person whose execution has been stayed because of pregnancy is no longer pregnant, he shall issue a warrant to the warden directing him to execute the sentence at a time designated in the warrant.

4. Fee to physician. The Governor shall allow a reasonable fee to the physician appointed under this section, which shall be paid by the State.

#### § 1856. Unjustifiable failure to execute sentence of death

If a death sentence is not executed because of an unjustified failure of the Governor to issue a warrant or for any other unjustifiable reason, the Supreme Judicial Court shall, upon application by the Attorney General, issue a warrant directing the sentence to be executed at a time specified in the warrant.

#### § 1857. Execution of death sentence

1. Execution. A death sentence shall be executed by electrocution. The warden of the State Prison shall designate the executioner. The warrant authorizing the execution shall be read to the convicted person immediately before execution.

2. Warden or designee. The warden of the State Prison or his designee shall be present at the execution. The execution shall be carried out at the time specified in the warrant, or as soon as possible thereafter.

3. Witnesses. Twelve citizens selected by the warden shall witness the execution. The Chief Medical Examiner, or his designee, shall be present to certify the death of the convicted person. Counsel for the convicted person and clergymen requested by the convicted person may be present. Representatives of the news media may be present under regulations approved by the Commissioner of Mental Health and Corrections. All other persons, except prison officers and guards, shall be excluded.

4. Disposal of bodies. The body of the convicted person shall be disposed of in the same manner as the bodies of inmates who die of natural causes in the State Prison.

#### § 1858. Return of warrant of execution

After the death sentence has been executed, the warden of the State Prison shall return to the Governor the warrant and a signed statement of the execution; provided that if the sentence has been executed pursuant to a warrant issued by the Supreme Judicial Court, the warden shall return the warrant and the statement to the court and send an attested copy to the Governor. The warden shall file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence.

Sec. 2. 15 MRSA § 2115, 2nd ¶, 1st sentence, as repealed and replaced by PL 1965, c. 356, § 63, is amended to read:

If an appeal from a judgment imposing a sentence of imprisonment for life or a sentence of death, if 3 justices concur, the judgment shall be reversed and may be remanded for a new trial.

Sec. 3. 15 MRSA § 2118 is enacted to read:

§ 2118. Review of death sentence

1. **Automatic sentence review.** Whenever a person is sentenced to death, the Supreme Judicial Court shall review the sentence in accordance with this section. Such sentence review shall be automatic and shall be in addition to a consideration of any errors raised on direct appeal; provided that if a direct appeal is taken, the appeal and the sentence review shall be consolidated. For purposes of the sentence review, the entire record of the proceedings of the trial court shall be transmitted to the Supreme Judicial Court.

2. **Excessive or disproportionate sentence.** With regard to the review of sentence, the court shall determine whether the sentence is excessive or disproportionate to the sentence imposed in similar cases, if any, considering both the crime and the defendant. If the court finds the sentence excessive or disproportionate to the sentence imposed in similar cases, the court shall have the authority, in addition to any of its other powers, to set aside the sentence and to remand the case to the trial court for the imposition of a sentence of life imprisonment.

3. **Direct appeal.** The sentence review and the direct appeal, if any, shall have priority over other cases and shall be heard in accordance with any rules which the Supreme Judicial court may prescribe to implement this section. Notwithstanding any other provision of law, no sentence of death shall be executed unless the sentence has been reviewed and affirmed in accordance with this section.

Sec. 4. 17-A MRSA § 201, sub-§ 2, ¶ G is enacted to read:

G. The person was engaged or was an accomplice in the commission of, or an attempt to commit, or immediate flight after committing, or attempting to commit burglary or robbery.

Sec. 5. 17-A MRSA § 201, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is amended to read:

4. The sentence for criminal homicide in the first degree shall be as authorized in chapter ~~57~~ 53-A.

Sec. 6. 17-A MRSA § 1251, sub-§ 4, as last amended by PL 1975, c. 740, § 115, is repealed.

Sec. 7. 17-A MRSA c. 53-A is enacted to read:

**CHAPTER 53-A**  
**SENTENCES FOR CRIMINAL HOMICIDE**  
**IN THE FIRST DEGREE**

§ 133I. Authorized sentences

A person who has been convicted of criminal homicide in the first degree shall be sentenced to life imprisonment, unless a proceeding to determine sentence, conducted in accordance with the procedures set forth in this

chapter, results in findings by the court that such person shall be sentenced to death, in which case, the person shall be sentenced to death.

§ 1332. Proceeding to determine sentence for criminal homicide in the first degree

1. When a person is convicted of criminal homicide in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the person should be sentenced to death or life imprisonment, as authorized by section 1331. The proceeding shall be conducted by the trial judge before the trial jury as soon after the conviction as possible. If one or more members of the trial jury is unable to participate in the sentencing proceeding, alternate jurors who were present during the trial but who did not participate in the deliberations and verdict thereof may be substituted for jurors who did participate. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant.

2. In the sentencing proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, and shall include matters relating to any of the aggravating or mitigating circumstances in subsections 5 and 6. Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is afforded a fair opportunity to rebut hearsay statements; except that this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Maine. The State, the defendant and counsel for the defendant shall be permitted to present argument for or against a sentence of death.

3. After hearing all of the evidence, the jury shall deliberate and shall recommend to the court either a sentence of life imprisonment or a sentence of death. The recommendation of the jury shall be based upon its consideration of the aggravating circumstances and the mitigating circumstances in subsections 5 and 6; provided that the jury shall not recommend a sentence of death unless it finds that the aggravating circumstances outweigh the mitigating circumstances. If the jury recommends a sentence of life imprisonment, or if the jury is unable to reach a unanimous recommendation, the court shall impose a sentence of life imprisonment.

4. If the jury recommends a sentence of death, or if the defendant has waived his right to a jury, the court shall, after a consideration of the aggravating circumstances and the mitigating circumstances in subsections 5 and 6, impose either a sentence of life imprisonment or a sentence of death; provided that it shall not impose a sentence of death unless it finds that the aggravating circumstances outweigh the mitigating circumstances. In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections 5 and 6 and upon the records of the trial and the sentencing proceedings.

5. The aggravating circumstances referred to in this section shall be limited to the following:

A. The circumstances enumerated in section 201, subsection 2, The jury and the court shall consider any of the relevant circumstances enumerated therein, including, but not limited to, the circumstance or circumstances upon which the conviction for criminal homicide in the first degree was based; and

B. At the time of the criminal homicide, the person had been convicted of any of the Class A or Class B crimes enumerated in chapters 9, 11, 13, 17, 27 and 33.

No aggravating circumstances may be considered by the jury or the court unless its existence has been proven beyond a reasonable doubt.

6. The mitigating circumstances referred to in this section shall include the following:

A. The person has no significant history of prior criminal activity;

B. The criminal homicide was committed while the person was under the influence of extreme mental or emotional disturbance;

C. The victim was a participant in the person's homicidal conduct or consented to the homicidal act;

D. The criminal homicide was committed under circumstances which the person believed to provide a moral justification or extenuation for his conduct;

E. The person was an accomplice in a criminal homicide committed by another and his participation in the homicidal act was relatively minor;

F. The person acted under duress or under the domination of another person;

G. At the time of the criminal homicide, the capacity of the person to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired; and

H. The age of the person at the time of the crime.

§ 1333. Appeal of prior criminal homicide in the first or 2nd degree

In the event a person has been convicted of criminal homicide in the first degree under section 201, subsection 2, paragraph A and the prior offense upon which the conviction was based is finally invalidated as a result of an appeal or collateral proceeding and retrial, if any, the person may petition a court of competent jurisdiction to be resentenced pursuant to section 1251, subsections 2 and 3. If the conviction under section 201, subsection 2, paragraph A resulted in the imposition of a sentence of death and the conviction for the prior offense is on appeal or is the subject of a collateral proceeding, the sentence of death shall not be executed until after the final disposition of the appeal, collateral proceeding, and retrial, if any.

Statutory referendum procedure; form of question; effective date. This Act shall be submitted to the legal voters of the State of Maine at a special statewide election to be held on the Tuesday following the first Monday of

November following passage of this Act. The city aldermen, town selectmen and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of this Act by voting on the following question:

“Shall ‘An Act to Reinstate the Death Penalty’ as passed at the First Regular Session of the 108th Legislature, become law?”

The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice by a cross or check mark placed within a corresponding square below the words “Yes” or “No.” The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns, and, if it appears that a majority of the legal votes are in favor of the Act, the Governor shall proclaim that fact without delay, and the Act shall become effective 30 days after the date of the proclamation.

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Act necessary to carry out the purpose of this referendum.

#### STATEMENT OF FACT

The purpose of this bill is to reinstate the death penalty by way of referendum.