

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1236

H.P. 924 House of Representatives, April 10, 1987  
Reference to the Committee on Judiciary suggested and  
ordered printed.

EDWIN H. PERT, Clerk  
Presented by Representative HEPBURN of Skowhegan.  
Cosponsored by Representatives LEBOWITZ of Bangor and  
CALLAHAN of Mechanic Falls.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN.

AN ACT to Reinstate Capital Punishment in  
Certain Murder Cases.

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

Sec. 1. 15 MRSA §1258-B is enacted to read:

§1258-B. Two juries impaneled

In a trial for murder for which the death penalty  
is mandatory pursuant to Title 17-A, section 1251,  
there shall be 2 juries of 12 persons impaneled. The  
first jury shall be charged to find the guilt or in-  
nocence of the defendant and make its recommendation  
to the court. The 2nd jury shall be charged to de-  
termine the sentence. When the 2nd jury recommends  
that death by execution by lethal injection shall be

1 the sentence of the defendant, the court shall so or-  
2 der and establish the time of execution as provided  
3 in Title 17-A, section 1251, subsection 4.

4 If the trial jury has been waived or if the def-  
5 endant pleaded guilty, the sentencing proceeding  
6 shall be conducted before a jury impaneled for that  
7 purpose, unless waived by the defendant.

8 **Sec. 2. 15 MRSA §1844 is enacted to read:**

9 §1844. Execution of death sentence

10 1. Execution. A death sentence shall be exe-  
11 cuted by lethal injection. The warden of the State  
12 Prison shall designate the executioner. The warrant  
13 authorizing the execution shall be read to the con-  
14 victed person immediately before execution. The war-  
15 den shall return the warrant and the statement to the  
16 court and send an attested copy to the Governor. The  
17 warden shall file an attested copy of the warrant and  
18 statement with the clerk of the court that imposed  
19 the sentence.

20 2. Warden or designee. The warden of the State  
21 Prison or his designee shall be present at the execu-  
22 tion. The execution shall be carried out at the time  
23 specified in the warrant or as soon as possible  
24 thereafter. The Chief Medical Examiner or his desig-  
25 nee shall be present to certify the death of the con-  
26 victed person. Counsel for the convicted person may  
27 be present.

28 3. Disposal of bodies. The body of the executed  
29 person shall be disposed of in the same manner as the  
30 bodies of inmates who die of natural causes in the  
31 State Prison.

32 **Sec. 3. 15 MRSA §2115, 2nd ¶, as repealed and**  
33 **replaced by PL 1965, c. 356, §63, is amended to read:**

34 In an appeal from a judgment imposing a sentence  
35 of imprisonment for life or a sentence of death, if 3  
36 justices concur, the judgment shall be reversed and  
37 may be remanded for a new trial. In all other crimi-  
38 nal cases, the judgment shall be affirmed, unless a

1 majority of the justices sitting and qualified to act  
2 in the case concur in its reversal.

3 Sec. 4. 15 MRSa §2142-A is enacted to read:

4 §2142-A. Death penalty; review of sentence

5 Whenever the sentence of death by lethal injection  
6 is ordered and upon the judgment becoming final  
7 in the Trial Court, the sentence shall be reviewed in  
8 the Supreme Judicial Court. The clerk of the Trial  
9 Court, within 10 days after the order of sentence,  
10 shall transmit the entire record and transcript to  
11 the Supreme Judicial Court, together with a notice  
12 prepared by the clerk and a report prepared by the  
13 trial judge. The notice shall set forth the title  
14 and docket number of the case, the name of the de-  
15 fendant and the name and address of his attorney, a  
16 narrative statement of the judgment, the offense and  
17 the sentence ordered.

18 The sentence review and the direct appeal, if  
19 any, shall have priority over other cases and shall  
20 be heard in accordance with any rules which the Su-  
21 preme Judicial Court may prescribe to implement this  
22 section. Notwithstanding any other provision of law,  
23 no sentence of death may be executed unless the sen-  
24 tence has been reviewed and affirmed in accordance  
25 with this section.

26 If a direct appeal is taken, the appeal and the  
27 sentence review shall be consolidated. For purposes  
28 of the sentence review, the entire record of the pro-  
29 ceedings of the Trial Court shall be transmitted to  
30 the Supreme Judicial Court.

31 When a person has been sentenced to death and the  
32 sentence has been reviewed and affirmed by the Su-  
33 preme Judicial Court, the clerk of the Trial Court  
34 shall prepare a certified copy of the record of the  
35 judgment and the sheriff shall transmit the record to  
36 the Governor.

37 Sec. 5. 15 MRSa §2161-B is enacted to read:

38 §2161-B. Stay of execution of death sentence

1        The execution of a death sentence may be stayed  
2 only by the Governor or incident to an appeal or col-  
3 lateral proceeding.

4        The Governor may stay the execution of a sentence  
5 of death for stated periods as long as he considers  
6 it necessary to afford him an opportunity to pardon  
7 or commute the sentence of the convict and to inves-  
8 tigate and consider the facts of the case for that  
9 purpose.

10        Sec. 6. 17-A MRSA §1152, sub-§2, ¶¶F and G, as  
11 enacted by PL 1985, c. 821, §3, are amended to read:

12        F. A term of imprisonment as authorized by chap-  
13 ter 51; or

14        G. A fine as authorized by chapter 53. Subject  
15 to the limitations of section 1302, such a fine  
16 may be imposed in addition to the sentencing al-  
17 ternatives in paragraphs B, D, E and F; or

18        Sec. 7. 17-A MRSA §1152, sub-§2, ¶H is enacted  
19 to read:

20        H. Death by lethal injection as authorized by  
21 chapter 51.

22        Sec. 8. 17-A MRSA §1251, as repealed and re-  
23 placed by PL 1983, c. 673, §3, is repealed and the  
24 following enacted in its place:

25        §1251. Imprisonment or execution for murder

26        1. Imprisonment. A person convicted of the  
27 crime of murder shall be sentenced to imprisonment  
28 for life or for any term of years that is not less  
29 than 25 years. The sentence of the court shall spec-  
30 ify the length of the sentence to be served and shall  
31 commit the person to the Department of Corrections.

32        2. Execution of a person convicted of the crime  
33 of murder. When the person has been convicted of the  
34 crime of murder of 3 or more persons in one event or  
35 2 persons in more than one event and a final judgment  
36 has been made in the previous event or when the vic-  
37 tim is less than 18 years of age or the victim is a

1 law enforcement officer or corrections officer, while  
2 in the line of duty, the sentence shall be death by  
3 execution by lethal injection.

4 3. Sentence based on prior offense or collateral  
5 proceeding. In the event a person has been convicted  
6 of murder and sentenced under section 201, subsection  
7 2, and the prior offense upon which the sentence was  
8 based is finally invalidated as a result of an appeal  
9 or collateral proceeding and retrial, if any, the  
10 person may petition a court of competent jurisdiction  
11 to be resentenced pursuant to this chapter. If the  
12 sentence under section 201, subsection 2, resulted in  
13 the imposition of a sentence of death and the conviction  
14 for the prior offense is on appeal or is the  
15 subject of a collateral proceeding, the sentence of  
16 death shall not be executed until after the final  
17 disposition of the appeal, collateral proceeding and  
18 retrial, if any.

19 4. Time of sentence; death by lethal injection.  
20 When any person is convicted of a crime punishable by  
21 death by lethal injection and sentenced to death by  
22 lethal injection, the time for the execution of the  
23 sentence shall be fixed by the court, which time  
24 shall be not less than 12 months nor more than 15  
25 months from the day on which the sentence is passed.  
26 The convicted person shall, at the same time, be sentenced  
27 to confinement in the State Prison until the  
28 sentence is executed.

29 5. Exemption; minor. Notwithstanding this section  
30 no person who is under the age of 18, when the  
31 murder is committed, may be sentenced to death.

32 Sec. 9. Transition clause. When the provisions  
33 of this Act require changes in law, the court shall  
34 submit the recommended changes by January 1, 1988, to  
35 the Second Regular Session of the 113th Legislature.

36 Sec. 10. Statutory referendum procedure; submission  
37 at statewide election; form of question; effective  
38 date. This Act shall be submitted to the legal  
39 voters of the State of Maine at a statewide election  
40 to be held on the Tuesday following the first Monday  
41 of November following passage of this Act. The city  
42 aldermen, town selectmen and plantation assessors of

1 this State shall notify the inhabitants of their re-  
2 spective cities, towns and plantations to meet, in  
3 the manner prescribed by law for holding a statewide  
4 election, to vote on the acceptance or rejection of  
5 this Act by voting on the following question:

6 "Shall the death penalty be reinstated for cer-  
7 tain murder cases?"

8 The legal voters of each city, town and planta-  
9 tion shall vote by ballot on this question, and shall  
10 designate their choice by a cross or check mark  
11 placed within a corresponding square below the word  
12 "Yes" or "No." The ballots shall be received,  
13 sorted, counted and declared in open ward, town and  
14 plantation meetings and returns made to the Secretary  
15 of State in the same manner as votes for members of  
16 the Legislature. The Governor shall review the re-  
17 turns and, if it appears that a majority of the legal  
18 voters are in favor of the Act, the Governor shall  
19 proclaim that fact without delay, and section 8 of  
20 this Act shall take effect upon such proclamation and  
21 the remainder of the Act shall take effect on Decem-  
22 ber 31, 1987, and its provisions shall govern persons  
23 convicted of murder as provided in this Act when the  
24 death of the victim occurred subsequent to that date.

25 The Secretary of State shall prepare and furnish  
26 to each city, town and plantation all ballots, re-  
27 turns and copies of this Act necessary to carry out  
28 the purpose of this referendum.

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STATEMENT OF FACT

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This bill provides for a sentence of death by lethal injection when the person convicted has murdered 3 or more persons in one event, 2 persons in separate events or when the victim is a person under the age of 18 or a law enforcement or corrections officer. The intent is to deter those crimes. The bill will be submitted to the voters as a referendum to be held at the statewide election in November.

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