

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1238

S.P. 462

In Senate, March 21, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRAWN of Knox (BY REQUEST).

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Reestablish Capital Punishment in the State.

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 held 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 must 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 is sentenced to death and the sentence is 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 may 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 the warden 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, the Governor 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 the convicted person understands the nature and effect of the death penalty and why it is imposed upon the convicted person. The examination of the convicted person must 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 the convicted person.

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

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

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

22 5. Fees for psychiatrists. The Governor shall allow
24 reasonable fees to psychiatrists appointed under this section.
The State shall pay the fees.

26 §1855. Proceedings when person sentenced to death appears
28 to be pregnant

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

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

42 3. Issuance of warrant when convicted person is no longer
pregnant. If the Governor determines that a convicted person
44 whose execution is stayed because of pregnancy is no longer
pregnant, the Governor shall issue a warrant to the warden
46 directing the warden to execute the sentence at a time designated
in the warrant.

48 4. Fee to physician. The Governor shall allow a reasonable
50 fee to the physician appointed under this section. The State
shall pay the fee.

52

2
3 §1856. Unjustifiable failure to execute sentence of death

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

10 §1857. Execution of death sentence

11
12 1. Execution. A death sentence must be executed by lethal
13 injection. The warden of the State Prison shall designate the
14 executioner. The warrant authorizing the execution must be read
15 to the convicted person immediately before execution.

16
17 2. Warden or designee. The warden of the State Prison or
18 the warden's designee shall be present at the execution. The
19 execution must be carried out at the time specified in the
20 warrant or as soon as possible after the time specified in the
21 warrant.

22
23 3. Witnesses. Twelve citizens selected by the warden must
24 witness the execution. The Chief Medical Examiner or the medical
25 examiner's designee shall be present to certify the death of the
26 convicted person. Counsel for the convicted person and clergy
27 requested by the convicted person may be present.
28 Representatives of the news media may be present under rules
29 approved by the Commissioner of Corrections. All other persons,
30 except prison officers and guards, are excluded.

31
32 4. Disposal of bodies. The body of the convicted person
33 must be disposed of in the same manner as the bodies of inmates
34 who die of natural causes in the State Prison.

35
36 §1858. Return of warrant of execution

37
38 After the death sentence is executed, the warden of the
39 State Prison shall return to the Governor the warrant and a
40 signed statement of execution. If the sentence is executed
41 pursuant to a warrant issued by the Supreme Judicial Court, the
42 warden shall return the warrant and the statement to the court
43 and send an attested copy to the Governor. The warden shall file
44 an attested copy of the warrant and statement with the clerk of
45 the court that imposed the sentence.

46
47 Sec. 2. 15 MRSA §2115, 2nd ¶, as repealed and replaced by PL
48 1965, c. 356, §63, is amended to read:

49
50 In an appeal from a judgment imposing a sentence of
51 imprisonment for life or a sentence of death, if 3 justices
52 concur, the judgment shall be is reversed and may be remanded for

2 a new trial. In all other criminal cases, the judgment shall-be
3 is affirmed, unless a majority of the justices sitting and
4 qualified to act in the case concur in its reversal.

6 Sec. 3. 15 MRSA §2131-A is enacted to read:

8 §2131-A. Review of death sentence

10 1. Automatic sentence review. Whenever a person is
11 sentenced to death, the Supreme Judicial Court shall review the
12 sentence in accordance with this section. The sentence review is
13 automatic and in addition to a consideration of any errors raised
14 on direct appeal. If a direct appeal is taken, the appeal and
15 the sentence review are consolidated. For purposes of the
16 sentence review, the entire record of the proceedings of the
trial court is transmitted to the Supreme Judicial Court.

18 2. Excessive or disproportionate sentence. With regard to
19 the review of the sentence, the court shall determine whether the
20 sentence is excessive or disproportionate to the sentence imposed
21 in similar cases, if any, considering both the crime and the
22 defendant. If the court finds the sentence excessive or
23 disproportionate to the sentence imposed in similar cases, the
24 court may, in addition to any of its other powers, set aside the
25 sentence and remand the case to the trial court for the
26 imposition of a sentence of life imprisonment.

28 3. Direct appeal. The sentence review and the direct
29 appeal, if any, have priority over other cases and must be heard
30 in accordance with any rules that the Supreme Judicial Court may
31 prescribe to implement this section. A sentence of death may not
32 be executed unless the sentence is reviewed and affirmed in
33 accordance with this section.

34 Sec. 4. 17-A MRSA §201, sub-§2, as repealed and replaced by PL
35 1977, c. 510, §38, is amended to read:

38 2. The sentence for murder shall-be is as authorized in
39 chapter 51 52-A.

42 Sec. 5. 17-A MRSA §1251, as repealed and replaced by PL 1983,
43 c. 673, §3, is repealed.

44 Sec. 6. 17-A MRSA c. 52-A is enacted to read:

46 CHAPTER 52-A

48 SENTENCES FOR MURDER

50 §1271. Authorized sentences

2 A person who is convicted of murder is sentenced to life
3 imprisonment, unless a proceeding to determine sentence,
4 conducted in accordance with this chapter, results in findings by
5 the court that the person should be sentenced to death, in which
6 case, the person is sentenced to death.

7 §1272. Proceeding to determine sentence for murder

8
9
10 1. When a person is convicted of murder, the court shall
11 conduct a separate sentencing proceeding to determine whether the
12 person should be sentenced to death or life imprisonment, as
13 authorized by section 1271. The proceeding must be conducted by
14 the trial judge before the trial jury as soon after the
15 conviction as possible. If one or more members of the trial jury
16 are unable to participate in the sentencing proceeding, alternate
17 jurors who were present during the trial but did not participate
18 in the deliberations and verdict of the trial may be
19 substituted. If the trial jury was waived or if the defendant
20 pleaded guilty, the sentencing proceeding must be conducted
21 before a jury impaneled for that purpose, unless waived by the
22 defendant.

23
24 2. In the sentencing proceeding, evidence may be presented
25 concerning any matter that the court determines relevant to the
26 sentence and must include matters relating to any of the
27 aggravating or mitigating circumstances in subsections 5 and 6.
28 Any evidence that the court determines to have probative value
29 may be received, regardless of its admissibility under the
30 exclusionary rules of evidence, provided that the defendant is
31 afforded a fair opportunity to rebut hearsay statements. This
32 subsection may not be construed to authorize the introduction of
33 any evidence secured in violation of the United States
34 Constitution or the Constitution of Maine. The State, the
35 defendant and the counsel for the defendant may present argument
36 for or against a sentence of death.

37
38 3. After hearing all evidence, the jury shall deliberate
39 and recommend to the court a sentence of life imprisonment or a
40 sentence of death. The recommendation of the jury must be based
41 upon its consideration of the aggravating circumstances and the
42 mitigating circumstances in subsections 5 and 6. The jury may
43 not recommend a sentence of death unless it finds that the
44 aggravating circumstances outweigh the mitigating circumstances.
45 If the jury recommends a sentence of life imprisonment or is
46 unable to reach a unanimous recommendation, the court shall
47 impose a sentence of life imprisonment.

48
49 4. If the jury recommends a sentence of death or if the
50 defendant has waived the right to a jury, the court shall, after
51 a consideration of the aggravating circumstances and the
52 mitigating circumstances in subsections 5 and 6, impose a
53 sentence of life imprisonment or a sentence of death. The court

2 may not impose a sentence of death unless it finds that the
3 aggravating circumstances outweigh the mitigating circumstances.
4 In each case in which the court imposes the death sentence, the
5 determination of the court must be supported by specific written
6 findings of fact based upon the circumstances in subsections 5
7 and 6 and the records of the trial and the sentencing proceedings.

8 5. The aggravating circumstances referred to in this
9 section are limited to the following.

10 A. The murder was committed by a person under sentence of
11 imprisonment.

12 B. The defendant was previously convicted of another Class
13 A or Class B crime involving the use or threat of violence
14 to the person.

15 C. The defendant knowingly created a great risk of death to
16 4 or more persons.

17 D. The murder was committed while the defendant was engaged
18 in, or was an accomplice in, the commission of or an attempt
19 to commit any of the Class A or Class B crimes enumerated in
20 chapters 9, 11, 13, 17, 27 and 33.

21 E. The murder was committed for the purpose of avoiding or
22 preventing a lawful arrest or effecting an escape from
23 custody.

24 F. The murder was committed for pecuniary gain.

25 G. The murder was committed to disrupt or hinder the lawful
26 exercise of any governmental function or the enforcement of
27 laws.

28 H. The murder was especially heinous, atrocious or cruel.

29 An aggravating circumstance may not be considered by the jury or
30 the court unless its existence is proven beyond a reasonable
31 doubt.

32 6. The mitigating circumstances referred to in this section
33 involving a person convicted of murder include the following:

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

36 B. The murder was committed while the person was under the
37 influence of extreme mental or emotional disturbance;

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

2 D. The murder was committed under circumstances that the
4 person believed provided a moral justification or
extenuation for the person's conduct;

6 E. The person was an accomplice in a murder committed by
8 another and the person's participation in the murder was
relatively minor;

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

14 G. At the time of the murder, the capacity of the person to
16 appreciate the wrongfulness of the person's conduct or to
conform the person's conduct to the requirements of the law
was impaired; and

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

20 **§1273. Appeal of prior murder conviction**

22 If a person has been convicted of murder under section 201,
24 and the offense upon which the conviction was based is finally
26 invalidated as a result of an appeal or collateral proceeding and
28 retrial, if any, the person may petition a court of competent
30 jurisdiction to be resentenced pursuant to section 1271. If the
conviction under section 201 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 may not be executed until after the final disposition of
the appeal, collateral proceeding and retrial, if any.

32 **Sec. 7. Statutory referendum procedure; submission at statewide**
34 **election; form of question; effective date.** This Act must be submitted
36 to the legal voters of the State of Maine at a statewide
38 election to be held on the Tuesday following the first Monday of
40 November following passage of this Act. The municipal officers
42 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:

44 "Do you favor the reinstatement of the death penalty?"

46 The legal voters of each city, town and plantation shall
48 vote by ballot on this question, and shall designate their choice
50 by a cross or check mark placed within a corresponding square
52 below the word "Yes" or "No." The ballots must 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

2 shall review the returns and, if it appears that a majority of
the legal votes are in favor of the Act, the Governor shall
4 proclaim that fact without delay, and the Act takes effect 30
days after the date of the proclamation.

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

10

12

STATEMENT OF FACT

14

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