

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 42

S.P. 36

In Senate, January 12, 1993

Reference to the Committee on Judiciary suggested and ordered printed.

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

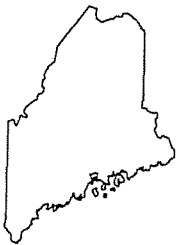
JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BEGLEY of Lincoln (BY REQUEST).

STATE OF MAINE

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

An Act to Reestablish Capital Punishment in the State.



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

2
3 Sec. 1. 10 MRSA §1174, sub-§3, ¶R, as enacted by PL 1981, c.
4 331, §6, is amended by amending subparagraph (3), division (c) to
5 read:

6
7 (c) Conviction of or plea of nolo contendere of a
8 franchised motor vehicle dealer, or one of its
9 principal owners, of any Class A, B or C crime, as
10 defined in the Maine Criminal Code, Title 17-A, in
11 which a sentence of imprisonment of one year or
12 more is imposed under Title 17-A, ~~sections 1251~~
13 and section 1252; or

14
15 Sec. 2. 15 MRSA c. 301, sub-c. V is enacted to read:

16
17 **SUBCHAPTER V**

18
19 **EXECUTION OF SENTENCE OF DEATH**

20
21 **§1851. Transfer to State Prison**

22
23 When a person is sentenced to death, the judgment of the
24 court must direct the sheriff of the county in which the trial
25 was held to cause the person to be removed from the county jail
26 to the State Prison. Unless otherwise directed by an appropriate
27 court order, the person must be kept in the State Prison pending
28 the review of the sentence by the Supreme Judicial Court.

29
30 **§1852. Issuance of warrant by Governor**

31
32 When a person is sentenced to death and the sentence is
33 reviewed and affirmed by the Supreme Judicial Court, the clerk of
34 the trial court shall prepare a certified copy of the record of
35 the judgment and the sheriff shall transmit the record to the
36 Governor. The sentence may not be executed until the Governor
37 issues a warrant, attaches it to the copy of the record and
38 transmits it to the warden of the State Prison, directing the
39 warden to execute the sentence at a time specified in the warrant.

40
41 **§1853. Stay of execution of death sentence**

42
43 The execution of a death sentence may be stayed only by the
44 Governor or incident to an appeal or collateral proceeding.

45
46 **§1854. Proceedings when person sentenced to death appears to be**
47 **mentally ill**

48
49 **1. Examination by psychiatrists.** When the Governor is
50 informed that a person under sentence of death may be mentally

2 ill, the Governor shall stay execution of the sentence and
3 appoint a commission of 3 psychiatrists to examine the convicted
4 person. The Governor shall notify the psychiatrists in writing
5 that they are to examine the convicted person to determine
6 whether the convicted person understands the nature and effect of
7 the death penalty and why it is imposed upon the convicted
8 person. The examination of the convicted person must take place
9 with all 3 psychiatrists present at the same time. Counsel for
10 the convicted person and counsel for the State may be present at
11 the examination. If the convicted person does not have counsel,
12 the court that imposed the sentence shall appoint counsel to
13 represent the convicted person.

14 2. Issuance of warrant. After receiving the report of the
15 commission of 3 psychiatrists, if the Governor decides that the
16 convicted person has the mental capacity to understand the nature
17 of the death penalty and the reasons it was imposed upon the
18 convicted person, the Governor shall issue a warrant to the
19 warden directing the warden to execute the sentence at a time
20 designated in the warrant.

22 3. Committed to mental health institute. If the Governor
23 decides that the convicted person does not have the mental
24 capacity to understand the nature of the death penalty and the
25 reasons it was imposed on the convicted person, the Governor
26 shall have the convicted person committed to a state mental
27 health institute.

28 4. Determination of sanity. When a person under sentence
29 of death has been committed to a state mental health institute,
30 the person must be kept there until the proper official of the
31 institute determines that the person is restored to sanity. The
32 institute official shall notify the Governor of the official's
33 determination and the Governor shall appoint another commission
34 of 3 psychiatrists to proceed as provided in subsection 1.

35 5. Fees for psychiatrists. The Governor shall allow
36 reasonable fees to psychiatrists appointed under this section.
37 The State shall pay the fees.

38 **§1855. Proceedings when person sentenced to death appears to be**
39 **pregnant**

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

45 2. Issuance of warrant after report of physician. After
46 receiving the report of the physician, if the Governor determines
47 that the convicted person is pregnant, the Governor shall
48 stay execution of the sentence and appoint a qualified physician
49 to examine the convicted person and determine if the convicted
50 person is pregnant.

2 that the convicted person is not pregnant, the Governor shall
3 issue a warrant to the warden directing the warden to execute the
4 sentence at a time designated in the warrant.

6 3. Issuance of warrant when convicted person is no longer
7 pregnant. If the Governor determines that a convicted person
8 whose execution is stayed because of pregnancy is no longer
9 pregnant, the Governor shall issue a warrant to the warden
10 directing the warden to execute the sentence at a time designated
11 in the warrant.

12 4. Fee to physician. The Governor shall allow a reasonable
13 fee to the physician appointed under this section. The State
14 shall pay the fee.

16 **§1856. Unjustifiable failure to execute sentence of death**

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

24 **§1857. Execution of death sentence**

26 1. Execution. A death sentence must be executed by lethal
27 injection. The warden of the State Prison shall designate the
28 executioner. The warrant authorizing the execution must be read
29 to the convicted person immediately before execution.

32 2. Warden or designee. The warden of the State Prison or
33 the warden's designee shall be present at the execution. The
34 execution must be carried out at the time specified in the
35 warrant or as soon as possible after the time specified in the
36 warrant.

38 3. Witnesses. Twelve citizens selected by the warden must
39 witness the execution. The Chief Medical Examiner or the medical
40 examiner's designee shall be present to certify the death of the
41 convicted person. Counsel for the convicted person and clergy
42 requested by the convicted person may be present.
43 Representatives of the news media may be present under rules
44 approved by the Commissioner of Corrections. All other persons,
45 except prison officers and guards, are excluded.

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

2 **§1858. Return of warrant of execution**

4 After the death sentence is executed, the warden of the
6 State Prison shall return to the Governor the warrant and a
8 signed statement of execution. If the sentence is executed
10 pursuant to a warrant issued by the Supreme Judicial Court, the
12 warden shall return the warrant and the statement to the court
14 and send an attested copy to the Governor. The warden shall file
16 an attested copy of the warrant and statement with the clerk of
18 the court that imposed the sentence.

20 **Sec. 2. 15 MRSA §2115, last ¶,** as repealed and replaced by PL
22 1965, c. 356, §63, is amended to read:

24 In an appeal from a judgment imposing a sentence of
26 imprisonment for life or a sentence of death, if 3 justices
28 concur, the judgment shall ~~be~~ is reversed and may be remanded for
30 a new trial. In all other criminal cases, the judgment shall ~~be~~
32 is affirmed, unless a majority of the justices sitting and
34 qualified to act in the case concur in its reversal.

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

38 **§2131-A. Review of death sentence**

40 **1. Automatic sentence review.** Whenever a person is
42 sentenced to death, the Supreme Judicial Court shall review the
44 sentence in accordance with this section. The sentence review is
46 automatic and in addition to a consideration of any errors raised
48 on direct appeal. If a direct appeal is taken, the appeal and
50 the sentence review are consolidated. For purposes of the
sentence review, the entire record of the proceedings of the
trial court is transmitted to the Supreme Judicial Court.

2. Excessive or disproportionate sentence. With regard to
the review of the 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 may, in addition to any of its other powers, set aside the
sentence and 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, have priority over other cases and must be heard
in accordance with any rules that the Supreme Judicial Court may
prescribe to implement this section. A sentence of death may not
be executed unless the sentence is reviewed and affirmed in
accordance with this section.

2 Constitution or the Constitution of Maine. The State, the
3 defendant and the counsel for the defendant may present argument
4 for or against a sentence of death.

5
6 3. After hearing all evidence, the jury shall deliberate
7 and recommend to the court a sentence of life imprisonment or a
8 sentence of death. The recommendation of the jury must be based
9 upon its consideration of the aggravating circumstances and the
10 mitigating circumstances in subsections 5 and 6. The jury may
11 not recommend a sentence of death unless it finds that the
12 aggravating circumstances outweigh the mitigating circumstances.
13 If the jury recommends a sentence of life imprisonment or is
14 unable to reach a unanimous recommendation, the court shall
15 impose a sentence of life imprisonment.

16 4. If the jury recommends a sentence of death or if the
17 defendant has waived the right to a jury, the court shall, after
18 a consideration of the aggravating circumstances and the
19 mitigating circumstances in subsections 5 and 6, impose a
20 sentence of life imprisonment or a sentence of death. The court
21 may not impose a sentence of death unless it finds that the
22 aggravating circumstances outweigh the mitigating circumstances.
23 In each case in which the court imposes the death sentence, the
24 determination of the court must be supported by specific written
25 findings of fact based upon the circumstances in subsections 5
26 and 6 and the records of the trial and the sentencing proceedings.

27
28 5. The aggravating circumstances referred to in this
29 section are limited to the following.

30 A. The murder was committed by a person under sentence of
31 imprisonment.

32
33 B. The defendant was previously convicted of another Class
34 A or Class B crime involving the use or threat of violence
35 to the person.

36
37 C. The defendant knowingly created a great risk of death to
38 4 or more persons.

39
40 D. The murder was committed while the defendant was engaged
41 in, or was an accomplice in, the commission of or an attempt
42 to commit any of the Class A or Class B crimes enumerated in
43 chapters 9, 11, 13, 17, 27 and 33.

44
45 E. The murder was committed for the purpose of avoiding or
46 preventing a lawful arrest or effecting an escape from
47 custody.

48
49 F. The murder was committed for pecuniary gain.
50

2 G. The murder was committed to disrupt or hinder the lawful
4 exercise of any governmental function or the enforcement of
 laws.

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

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

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

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

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

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

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

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

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

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

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

42 §1273. Appeal of prior murder conviction

44 If a person has been convicted of murder under section 201,
46 and the offense upon which the conviction was based is finally
48 invalidated as a result of an appeal or collateral proceeding and
 retrial, if any, the person may petition a court of competent
50 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

2 appeal or is the subject of a collateral proceeding, the sentence
3 of death may not be executed until after the final disposition of
4 the appeal, collateral proceeding and retrial, if any.

6
7
8 **STATEMENT OF FACT**

9 This bill reinstates the death penalty for murder.
10