An Act to Reinstate the Death Penalty for the Murder of Children.

Reference to the Committee on Judiciary suggested and ordered printed.

Presented by Representative MacDOUGALL of North Berwick.
Cosponsored by Representatives: CRESSEY of Baldwin, FOSTER of Gray, SNOWE-MELLO of Poland, Senator: DAVIS of Piscataquis.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §1174, sub-§3, ¶R, as amended by PL 1995, c. 65, Pt. A, §15 and affected by §153 and Pt. C, §15, is further amended to read:

R. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, without first furnishing notification of the termination to the new motor vehicle dealer as follows:

(1) Notification under this paragraph shall be in writing, shall be by certified mail or personally delivered to the new motor vehicle dealer and shall contain:

(a) A statement of intention to terminate the franchise, cancel the franchise or not to renew the franchise;

(b) A statement of the reasons for the termination, cancellation or nonrenewal; and

(c) The date on which the termination, cancellation or nonrenewal takes effect;

(2) The notice described in this paragraph may not be less than 90 days prior to the effective date of the termination, cancellation or nonrenewal; or

(3) The notice described in this paragraph may not be less than 15 days prior to the effective date of the termination, cancellation or nonrenewal with respect to any of the following:

(a) Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

(b) The business operations of the franchised motor vehicle dealer have been abandoned or closed for 7 consecutive business days unless the closing is due to an act of God, strike or labor difficulty;
(c) Conviction of or plea of nolo contendere of a franchised motor vehicle dealer, or one of its principal owners, of murder or any Class A, B or C crime, as defined in the Maine Criminal Code, Title 17-A, in which a sentence of imprisonment of one year or more or a death sentence is imposed under Title 17-A, sections 1251-1252 chapter 51, 52 or 52-A; or

(d) Revocation of the franchised motor vehicle dealer's license pursuant to Title 29-A, section 903;

Sec. 2. 10 MRSA §1243, sub-§3, ¶Q, as enacted by PL 1997, c. 473, §3, is amended to read:

Q. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, without first providing notification of the termination, cancellation, nonrenewal or noncontinuance to the new personal sports mobile dealer as follows:

(1) Notification under this paragraph must be in writing and must be delivered personally or by certified mail to the new personal sports mobile dealer and must contain:

(a) A statement of intention to terminate, cancel, not continue or not renew the franchise;

(b) A statement of the reasons for the termination, cancellation, noncontinuance or nonrenewal; and

(c) The date on which the termination, cancellation, noncontinuance or nonrenewal takes effect;

(2) The notice required in this paragraph may not be given less than 90 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal, except as provided in subparagraph (3); or

(3) The notice required in this paragraph may not be given less than 15 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal with respect to any of the following:
(a) Insolvency of the new personal sports mobile dealer or filing of any petition by or against the new personal sports mobile dealer under any bankruptcy or receivership law;

(b) The business operations of the personal sports mobile dealer have been abandoned or closed for 14 consecutive business days unless the closing is due to an act of God, strike or labor difficulty; or

(c) Conviction of or plea of nolo contendere of a personal sports mobile dealer or one of its principal owners of murder or any Class A, Class B or Class C crime, as defined in Title 17-A, in which a sentence of imprisonment of one year or more or a death sentence is imposed under Title 17-A, sections 1251–1252 and 1271; or

Sec. 3. 10 MRSA §1434, sub-§3. ¶Q, as enacted by PL 1997, c. 427, §2, is amended to read:

Q. To cancel, terminate, fail to renew or refuse to continue any dealership relationship with a licensed new recreational vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or dealer agreement or the terms or provisions of any waiver, without first providing notification of the termination, cancellation, nonrenewal or noncontinuance to the new recreational vehicle dealer as follows:

(1) Notification must be in writing and delivered personally or by certified mail to the new recreational vehicle dealer and contain:

(a) A statement of intent to terminate the dealer agreement, cancel the dealer agreement, not continue the dealer agreement or not to renew the dealer agreement;

(b) A statement of the reasons for the termination, cancellation, noncontinuance or nonrenewal; and

(c) The date on which the termination, cancellation, noncontinuance or nonrenewal takes effect;
(2) Notification may not be less than 90 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal; or

(3) Notification may not be less than 15 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal with respect to any of the following:

(a) Insolvency of the new recreational vehicle dealer or filing of any petition by or against the new recreational vehicle dealer under any bankruptcy or receivership law;

(b) The business operations outlined by the dealer agreement have been abandoned or closed for 14 consecutive business days unless the closing is due to an act of God, a strike or labor difficulty;

(c) Conviction of or plea of nolo contendere of a recreational vehicle dealer or one of its principal owners of murder or any Class A, Class B or Class C crime, as defined in Title 17-A, in which a sentence of imprisonment of 60 days or more or a death sentence is imposed under Title 17-A, sections 1251 and 1252; and

(d) Revocation of the recreational vehicle dealer's license pursuant to Title 29-A, section 903; or

(e) A determination that there was a material fraudulent misrepresentation by the dealer to the manufacturer, distributor or wholesaler; or

Sec. 4. 15 MRSA c. 301, sub-c. V is enacted to read:

SUBCHAPTER V

EXECUTION OF SENTENCE OF DEATH

§1851. Transfer to Maine State Prison

When a person is sentenced to death, the judgment of the court must direct the sheriff of the county in which the trial was held to move the person from the county jail to the Maine State Prison. Unless otherwise directed by an appropriate court order, the person must be kept in the Maine 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 directing the Warden of the Maine State Prison to execute the sentence at a specified time, attaches it to the copy of the record and transmits it to the warden.

§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. 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. 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 it was imposed upon the convicted person, the Governor shall issue a warrant to the Warden of the Maine State Prison directing the warden 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 the reasons it was imposed, the Governor shall have the convicted person 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,
the person must be kept there until the proper official of the
institute determines that the person is restored to sanity. The
institute official shall notify the Governor of the official's
determination, and the Governor shall appoint another commission
to proceed as provided in subsection 1.

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

§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, the
Governor shall stay execution of the sentence and appoint a
qualified physician to examine the convicted person and determine
if the convicted person is pregnant.

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

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

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

§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, upon
application by the Attorney General, shall issue a warrant
directing the Warden of the Maine State Prison to execute the
sentence at a time specified in the warrant.

§1857. Execution of death sentence

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

2. Warden or designee. The Warden of the Maine State Prison or the warden’s designee must be present at the execution. The execution must be carried out at the time specified in the warrant or as soon as possible after the time specified in the warrant.

3. Witnesses. Twelve citizens selected by the Warden of the Maine State Prison must witness the execution. The Chief Medical Examiner or the medical examiner’s designee must be present to certify the death of the convicted person. Counsel for the convicted person and clergy requested by the convicted person may be present. Representatives of the news media may be present under rules approved by the Commissioner of Corrections. All other persons, except prison officers and guards, are excluded. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

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

§1858. Return of warrant of execution

After the death sentence is executed, the Warden of the Maine State Prison shall return to the Governor the warrant and a signed statement of execution. If the sentence is 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. 5. 15 MRSA §2115, 2nd ¶, as repealed and replaced by PL 1965, c. 356, §63, is amended to read:

In 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. In all other criminal cases, the judgment shall be affirmed, unless a majority of the justices sitting and qualified to act in the case concur in its reversal.

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

§2131-A. Review of death sentence
1. Automatic sentence review. When a person is sentenced to death, the Supreme Judicial Court shall review the sentence in accordance with this section. The sentence review is automatic and in addition to a consideration of any errors raised on direct appeal. If a direct appeal is taken, the appeal and 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 Supreme Judicial 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 Supreme Judicial 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.

Sec. 7. 17-A MRSA §201, sub-§2. as repealed and replaced by PL 1977, c. 510, §38, is amended to read:

2. The sentence for murder shall be as authorized in chapter 51 §2-A.

Sec. 8. 17-A MRSA §1251, as amended by PL 1999, c. 536, §1, is repealed.

Sec. 9. 17-A MRSA §1252-B, sub-§2, as enacted by PL 1995, c. 433, §1, is amended to read:

2. For persons who commit crimes on or after October 1, 1995, section 1253, subsection 8 substantially reduces the statutory deductions available under subsections 3 and 3-B for good time and under subsections 4 and 5 for meritorious good time. The change is intended to ensure that the term of imprisonment imposed closely approximates what will in fact be served and to abandon administrative awards that have seriously imperiled the State's statutory scheme relative to authorized terms of imprisonment for murder under section 1251 §271 and for crimes other than murder under section 1252, subsection 2. At the same time that it reduces these statutory deductions,
however, the Legislature intends that the parties in requesting or recommending dispositions and the sentencing courts, who ultimately impose sentences, to the extent that they have imposed longer terms of imprisonment in an effort to compensate for the impact of substantial good time and meritorious good time deductions, must shall make, pursuant to this subsection, the necessary adjustments in their sentencing decisions in view of the substantially reduced deductions. Application of section 1253, subsection 8 to the sentencing process must be reflected in the imposition of shorter terms of imprisonment by courts.

Sec. 10. 17-A MRSA c. 52-A is enacted to read:

CHAPTER 52-A

SENTENCES FOR MURDER

§1271. Authorized sentences

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

§1272. Proceeding to determine sentence for murder

1. When a person is convicted of murder of a child under 6 years of age, 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 1271. The proceeding must 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 are unable to participate in the sentencing proceeding, alternate jurors who were present during the trial but did not participate in the deliberations and verdict of the trial may be substituted. If the trial jury was waived or if the defendant pleaded guilty, the sentencing proceeding must be conducted before a jury impaneled for that purpose, unless waived by the defendant.

2. In the sentencing proceeding under this section, evidence may be presented concerning any matter that the court determines relevant to the sentence and must include matters relating to whether the murder was especially heinous, atrocious or cruel. Any evidence that the court determines to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, as long as the defendant is afforded a fair opportunity to rebut hearsay statements. This subsection may not be construed to authorize
the introduction of any evidence secured in violation of the United States Constitution or the Constitution of Maine. The State, the defendant and the counsel for the defendant may present arguments for or against a sentence of death.

3. After hearing all evidence pursuant to subsection 1, the jury shall deliberate and recommend to the court a sentence of life imprisonment or a sentence of death. The recommendation of the jury must be based upon its consideration of the matters relating to whether the murder was especially heinous, atrocious or cruel.

4. The court shall impose a sentence of life imprisonment if:

   A. The jury recommends a sentence of life imprisonment; or
   
   B. The jury is unable to reach a unanimous recommendation.

5. The court may impose either a sentence of life imprisonment or a sentence of death if:

   A. The jury recommends a sentence of death; or
   
   B. The defendant waived the right to a jury.

The court may not impose a sentence of death unless it finds that the murder was especially heinous, atrocious or cruel. When the court imposes a sentence of death, the determination of the court must be supported by specific written findings of fact based upon the records of the trial and the sentencing proceedings.

§1273. Appeal of prior murder conviction

If a person has been convicted of murder under section 201, and the 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 this chapter. If the subsequent 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.

Sec. 11. Statutory referendum procedure; submission at statewide election; form of question; effective date. This Act must be submitted to the legal voters of the State of Maine at a statewide election held on the Tuesday following the first Monday of November following
of this Act. The municipal officers 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:

"Do you favor reinstating the death penalty in cases
involving the murder of a young child?"

The legal voters of each city, town and plantation shall
vote by ballot on this question, and designate their choice by a
cross or check mark placed within a corresponding square 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 shall review
the returns and, if it appears that a majority of the legal votes
are cast in favor of the Act, the Governor shall proclaim that
fact without delay, and the Act takes effect 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.

SUMMARY

This bill reinstates the death penalty for the murder of a
child under 6 years of age subject to a referendum on whether the
people of the State want to instate a death penalty for the
murder of young children.