

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1493

H.P. 1124

House of Representatives, March 8, 2001

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

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

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:

2  
3       **Sec. 1. 10 MRSA §1174, sub-§3. ¶R**, as amended by PL 1995, c.  
4 65, Pt. A, §15 and affected by §153 and Pt. C, §15, is further  
5 amended to read:

6  
7       R. To cancel, terminate, fail to renew or refuse to  
8 continue any franchise relationship with a licensed new  
9 motor vehicle dealer, notwithstanding the terms, provisions  
10 or conditions of any agreement or franchise or the terms or  
11 provisions of any waiver, without first furnishing  
12 notification of the termination to the new motor vehicle  
13 dealer as follows:

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

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

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

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

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

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

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

36                       (b) The business operations of the franchised  
37 motor vehicle dealer have been abandoned or closed  
38 for 7 consecutive business days unless the closing  
39 is due to an act of God, strike or labor  
40 difficulty;

2 (c) Conviction of or plea of nolo contendere of a  
3 franchised motor vehicle dealer, or one of its  
4 principal owners, of murder or any Class A, B or C  
5 crime, as defined in the Maine Criminal Code,  
6 Title 17-A, in which a sentence of imprisonment of  
7 one year or more or a death sentence is imposed  
8 under Title 17-A, ~~sections 1251 and 1252~~ chapter  
51, 52 or 52-A; or

10 (d) Revocation of the franchised motor vehicle  
11 dealer's license pursuant to Title 29-A, section  
12 903;

14 **Sec. 2. 10 MRSA §1243, sub-§3. ¶Q,** as enacted by PL 1997, c.  
15 473, §3, is amended to read:

16 Q. To cancel, terminate, fail to renew or refuse to continue  
17 any franchise relationship with a licensed new personal  
18 sports mobile dealer, notwithstanding the terms, provisions  
19 or conditions of any agreement or franchise or the terms or  
20 provisions of any waiver, without first providing  
21 notification of the termination, cancellation, nonrenewal or  
22 noncontinuance to the new personal sports mobile dealer as  
23 follows:  
24

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

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

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

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

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

42 (3) The notice required in this paragraph may not be  
43 given less than 15 days prior to the effective date of  
44 the termination, cancellation, noncontinuance or  
45 nonrenewal with respect to any of the following:  
46  
47  
48  
49  
50

2 (a) Insolvency of the new personal sports mobile  
4 dealer or filing of any petition by or against the  
new personal sports mobile dealer under any  
bankruptcy or receivership law;

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

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

20 **Sec. 3. 10 MRSA §1434, sub-§3, ¶Q**, as enacted by PL 1997, c.  
22 427, §2, is amended to read:

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

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

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

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

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

2 (2) Notification may not be less than 90 days prior to  
the effective date of the termination, cancellation,  
4 noncontinuance or nonrenewal; or

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

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

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

20 (c) Conviction of or plea of nolo contendere of a  
recreational vehicle dealer or one of its  
22 principal owners of murder or any Class A, Class B  
or Class C crime, as defined in Title 17-A, in  
24 which a sentence of imprisonment of 60 days or  
more or a death sentence is imposed under Title  
26 17-A, sections ~~1251~~ and 1252 and 1271;

28 (d) Revocation of the recreational vehicle  
dealer's license pursuant to Title 29-A, section  
30 903; or

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

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

38 **SUBCHAPTER V**

40 **EXECUTION OF SENTENCE OF DEATH**

42 **§1851. Transfer to Maine State Prison**

44 When a person is sentenced to death, the judgment of the  
46 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  
48 State Prison. Unless otherwise directed by an appropriate court  
order, the person must be kept in the Maine State Prison pending  
50 the review of the sentence by the Supreme Judicial Court.

2  
3 **§1852. Issuance of warrant by Governor**

4 When a person is sentenced to death and the sentence is  
5 reviewed and affirmed by the Supreme Judicial Court, the clerk of  
6 the trial court shall prepare a certified copy of the record of  
7 the judgment and the sheriff shall transmit the record to the  
8 Governor. The sentence may not be executed until the Governor  
9 issues a warrant directing the Warden of the Maine State Prison  
10 to execute the sentence at a specified time, attaches it to the  
11 copy of the record and transmits it to the warden.

12 **§1853. Stay of execution of death sentence**

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

15 **§1854. Proceedings when person sentenced to death appears**  
16 **to be mentally ill**

17  
18  
19 **1. Examination by psychiatrists.** When the Governor is  
20 informed that a person under sentence of death may be mentally  
21 ill, the Governor shall stay execution of the sentence and  
22 appoint a commission of 3 psychiatrists to examine the convicted  
23 person. The Governor shall notify the psychiatrists in writing  
24 that they are to examine the convicted person to determine  
25 whether the convicted person understands the nature and effect of  
26 the death penalty and why it is imposed upon the convicted  
27 person. The examination of the convicted person must take place  
28 with all 3 psychiatrists present. Counsel for the convicted  
29 person and counsel for the State may be present at the  
30 examination. If the convicted person does not have counsel, the  
31 court that imposed the sentence shall appoint counsel to  
32 represent the convicted person.

33  
34 **2. Issuance of warrant.** After receiving the report of the  
35 commission, if the Governor decides that the convicted person has  
36 the mental capacity to understand the nature of the death penalty  
37 and the reasons it was imposed upon the convicted person, the  
38 Governor shall issue a warrant to the Warden of the Maine State  
39 Prison directing the warden to execute the sentence at a time  
40 designated in the warrant.

41  
42 **3. Committed to mental health institute.** If the Governor  
43 decides that the convicted person does not have the mental  
44 capacity to understand the nature of the death penalty and the  
45 reasons it was imposed, the Governor shall have the convicted  
46 person committed to a state mental health institute.

47  
48 **4. Determination of sanity.** When a person under sentence  
49 of death has been committed to a state mental health institute,  
50

2 the person must be kept there until the proper official of the  
4 institute determines that the person is restored to sanity. The  
6 institute official shall notify the Governor of the official's  
8 determination, and the Governor shall appoint another commission  
10 to proceed as provided in subsection 1.

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

18 **§1855. Proceedings when person sentenced to death appears**  
20 **to be pregnant**

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

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

44 3. Issuance of warrant when convicted person is no longer  
46 pregnant. If the Governor determines that a convicted person  
48 whose execution is stayed because of pregnancy is no longer  
50 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



2 the executioner. The warrant authorizing the execution must be  
3 read to the convicted person immediately before execution.

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

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

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

24 **§1858. Return of warrant of execution**

26 After the death sentence is executed, the Warden of the  
27 Maine State Prison shall return to the Governor the warrant and a  
28 signed statement of execution. If the sentence is executed  
29 pursuant to a warrant issued by the Supreme Judicial Court, the  
30 warden shall return the warrant and the statement to the court  
31 and send an attested copy to the Governor. The warden shall file  
32 an attested copy of the warrant and statement with the clerk of  
33 the court that imposed the sentence.

36 **Sec. 5. 15 MRSA §2115, 2nd ¶.** as repealed and replaced by PL  
37 1965, c. 356, §63, is amended to read:

38 In an appeal from a judgment imposing a sentence of  
39 imprisonment for life or a sentence of death, if 3 justices  
40 concur, the judgment ~~shall be~~ is reversed and may be remanded for  
41 a new trial. In all other criminal cases, the judgment ~~shall be~~  
42 is affirmed, unless a majority of the justices sitting and  
43 qualified to act in the case concur in its reversal.

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

48 **§2131-A. Review of death sentence**

2 1. Automatic sentence review. When a person is sentenced  
to death, the Supreme Judicial Court shall review the sentence in  
4 accordance with this section. The sentence review is automatic  
and in addition to a consideration of any errors raised on direct  
6 appeal. If a direct appeal is taken, the appeal and the sentence  
review are consolidated. For purposes of the sentence review,  
8 the entire record of the proceedings of the trial court is  
transmitted to the Supreme Judicial Court.

10 2. Excessive or disproportionate sentence. With regard to  
the review of the sentence, the Supreme Judicial Court shall  
12 determine whether the sentence is excessive or disproportionate  
to the sentence imposed in similar cases, if any, considering  
14 both the crime and the defendant. If the Supreme Judicial Court  
finds the sentence excessive or disproportionate to the sentence  
16 imposed in similar cases, the court may, in addition to any of  
its other powers, set aside the sentence and remand the case to  
18 the trial court for the imposition of a sentence of life  
imprisonment.

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

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

30 2. The sentence for murder shall--be is as authorized in  
32 chapter ~~51~~ 52-A.

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

36 **Sec. 9. 17-A MRSA §1252-B, sub-§2,** as enacted by PL 1995, c.  
38 433, §1, is amended to read:

40 2. For persons who commit crimes on or after October 1,  
1995, section 1253, subsection 8 substantially reduces the  
42 statutory deductions available under subsections 3 and 3-B for  
good time and under subsections 4 and 5 for meritorious good  
44 time. The change is intended to ensure that the term of  
imprisonment imposed closely approximates what will in fact be  
46 served and to abandon administrative awards that have seriously  
imperiled the State's statutory scheme relative to authorized  
48 terms of imprisonment for murder under section ~~1251~~ 1271 and for  
crimes other than murder under section 1252, subsection 2. At  
50 the same time that it reduces these statutory deductions,

2 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  
4 longer terms of imprisonment in an effort to compensate for the  
impact of substantial good time and meritorious good time  
6 deductions, ~~must~~ shall make, pursuant to this subsection, the  
necessary adjustments in their sentencing decisions in view of  
8 the substantially reduced deductions. Application of section  
1253, subsection 8 to the sentencing process must be reflected in  
10 the imposition of shorter terms of imprisonment by courts.

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

14 **CHAPTER 52-A**

16 **SENTENCES FOR MURDER**

18 **§1271. Authorized sentences**

20 A person who is convicted of murder is sentenced to life  
22 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  
24 case, the person is sentenced to death.

26 **§1272. Proceeding to determine sentence for murder**

28 1. When a person is convicted of murder of a child under 6  
years of age, the court shall conduct a separate sentencing  
30 proceeding to determine whether the person should be sentenced to  
death or life imprisonment, as authorized by section 1271. The  
32 proceeding must be conducted by the trial judge before the trial  
jury as soon after the conviction as possible. If one or more  
34 members of the trial jury are unable to participate in the  
sentencing proceeding, alternate jurors who were present during  
36 the trial but did not participate in the deliberations and  
verdict of the trial may be substituted. If the trial jury was  
38 waived or if the defendant pleaded guilty, the sentencing  
proceeding must be conducted before a jury impaneled for that  
40 purpose, unless waived by the defendant.

42 2. In the sentencing proceeding under this section,  
evidence may be presented concerning any matter that the court  
44 determines relevant to the sentence and must include matters  
relating to whether the murder was especially heinous, atrocious  
46 or cruel. Any evidence that the court determines to have  
probative value may be received, regardless of its admissibility  
48 under the exclusionary rules of evidence, as long as the  
defendant is afforded a fair opportunity to rebut hearsay  
50 statements. This subsection may not be construed to authorize

1  
2 the introduction of any evidence secured in violation of the  
3 United States Constitution or the Constitution of Maine. The  
4 State, the defendant and the counsel for the defendant may  
5 present arguments for or against a sentence of death.

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

12  
13 4. The court shall impose a sentence of life imprisonment  
14 if:

15 A. The jury recommends a sentence of life imprisonment; or

16 B. The jury is unable to reach a unanimous recommendation.

17  
18 5. The court may impose either a sentence of life  
19 imprisonment or a sentence of death if:

20 A. The jury recommends a sentence of death; or

21 B. The defendant waived the right to a jury.

22  
23 The court may not impose a sentence of death unless it finds that  
24 the murder was especially heinous, atrocious or cruel. When the  
25 court imposes a sentence of death, the determination of the court  
26 must be supported by specific written findings of fact based upon  
27 the records of the trial and the sentencing proceedings.

28  
29 **§1273. Appeal of prior murder conviction**

30  
31 If a person has been convicted of murder under section 201,  
32 and the offense upon which the conviction was based is finally  
33 invalidated as a result of an appeal or collateral proceeding and  
34 retrial, if any, the person may petition a court of competent  
35 jurisdiction to be resentenced pursuant to this chapter. If the  
36 subsequent conviction under section 201 resulted in the  
37 imposition of a sentence of death and the conviction for the  
38 prior offense is on appeal or is the subject of a collateral  
39 proceeding, the sentence of death may not be executed until after  
40 the final disposition of the appeal, collateral proceeding and  
41 retrial, if any.

42  
43 **Sec. 11. Statutory referendum procedure; submission at statewide**  
44 **election; form of question; effective date.** This Act must be submitted  
45 to the legal voters of the State of Maine at a statewide election  
46 held on the Tuesday following the first Monday of November  
47 following passage

2 of this Act. The municipal officers of this State shall notify  
the inhabitants of their respective cities, towns and plantations  
4 to meet, in the manner prescribed by law for holding a statewide  
election, to vote on the acceptance or rejection of this Act by  
6 voting on the following question:

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

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

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

### 26 SUMMARY

28 This bill reinstates the death penalty for the murder of a  
30 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  
32 murder of young children.