An Act To Prevent Domestic Abuse by Reinstating the Death Penalty for Persons Who Murder Family or Household Members

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

Presented by Senator COURTNEY of York.
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 must be in writing, shall must be by certified mail or personally delivered to the new motor vehicle dealer and shall must 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 shall 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 shall 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;
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 and 1252 chapter 51, 52 or 52-A; 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;
Section 4. 15 MRSA c. 301, sub-c. 5 is enacted to read:

SUBCHAPTER 5

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 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. Issuance of warrant. After receiving the report of the commission under subsection 1, 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 2-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 amended by PL 2001, c. 383, §8 and affected by §156, is further amended to read:

2. The sentence for murder is as authorized in chapter 51 except that, if the State pleads and proves that the crime of murder was committed against a family or household member, the sentence is as authorized in chapter 52-A.

Sec. 8. 17-A MRSA §201, sub-§6 is enacted to read:

6. For the purposes of this section, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.

Sec. 9. 17-A MRSA §1152, sub-§2, ¶¶K and L, as enacted by PL 2003, c. 711, Pt. A, §9, are amended to read:

K. A fine, suspended in whole or in part, with, at the court's discretion, administrative release as authorized by chapter 54-G; or

L. A suspended term of imprisonment with administrative release as authorized by chapter 54-G; or
Sec. 10. 17-A MRSA §1152, sub-§2, ¶M is enacted to read:

M. A sentence of death as authorized by chapter 52-A.

Sec. 11. 17-A MRSA c. 52-A is enacted to read:

CHAPTER 52-A

CAPITAL PUNISHMENT

§1271. Authorized sentence

A person who is convicted of murder under section 201 of a family or household member is sentenced to death.

§1272. 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. If a subsequent conviction under section 201 results in the imposition of a sentence of death pursuant to section 1271 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.

SUMMARY

This bill reinstates the death penalty only for persons who murder family or household members.