

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 863

S. P. 264

In Senate, March 4, 1975

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Merrill of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Require Mandatory Pre-sentence Reports in Juvenile and Felony Prosecutions.

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

Sec. 1. 15 MRSA § 1702 is amended by adding after the first paragraph a new paragraph to read:

A pre-sentence report, as prescribed by rule of court, shall be required and shall be considered by the court prior to the imposition of sentence in every felony case.

Sec. 2. 15 MRSA § 1702-A is enacted to read:

§ 1702-A. Procedure for consideration of sentencing objectives prior to sentencing

1. Sentencing alternatives. In every criminal sentencing proceeding regarding the commission of a felony, the sentencing judge shall, prior to the imposition of any sentence, consider, on the record, the following sentencing alternatives in the following order, utilizing all pre-sentence evidence and testimony presented in the case relative to the offender's particular background and the current capabilities of the correctional system in dealing most effectively with him:

- A. Unconditional release;
- B. A fine;
- C. Conditional release;
- D. Restitution to the victim by the offender, together with probation;

E. Conditional release under probation or other governmental supervision;

F. Placement in a halfway house or other residential facility located in the community;

G. Partial confinement in a correctional facility with opportunity to participate in community-based work, training or educational programs; and

H. Total confinement in a correctional facility.

In each case, the presiding judge shall articulate the reasons for selecting or rejecting each alternative disposition, or combination of dispositions, and those reasons shall be made a part of the record of the case.

2. Factors in the sentencing decision.

A. Factors justifying confinement may include but shall not be limited to those indicating that:

(1) There is undue risk that the offender will commit another crime if not confined;

(2) The offender is in need of correctional services that can be provided effectively only in an institutional setting, and such services are reasonably available; and

(3) Any other alternative will deprecate the deterrent value of the sentence relative to the seriousness of the offense.

B. Factors justifying sentencing to noninstitutional dispositions may include but shall not be limited to those indicating that:

(1) The offender's criminal conduct neither caused nor actually threatened serious harm;

(2) The offender had led a law-abiding life for a substantial period of time before commission of the present crime;

(3) The offender is likely to respond affirmatively to probationary or other community supervision;

(4) The victim of the crime induced or facilitated its commission;

(5) The offender has made or will make restitution or reparation to the victim of his crime for the damage or injury which was sustained;

(6) The offender's conduct was the result of circumstances unlikely to recur;

(7) The character, history and present condition of the offender indicate that he is unlikely to commit another crime; and

(8) The correctional programs within the institutions to which the offender could be sent are inappropriate to his particular needs or would not likely be of benefit to him.

Sec. 3. 15 MRSA § 2611, sub-§ 6 is enacted to read:

6. Consideration of pre-disposition report. In any case where the juvenile is adjudicated to have committed a juvenile offense, the court shall, before making a final dispositional order under subsection 4, consider a pre-disposition report as prescribed by rule of court.

Sec. 4. 15 MRSA § 2612 is enacted to read:

§ 2612. Procedure for consideration of dispositional objectives prior to making dispositional order

1. Dispositional alternatives. In every juvenile dispositional proceedings within the jurisdiction of the juvenile court under chapters 401 to 409, the presiding judge shall, prior to the making of the dispositional order, consider, on the record, the following dispositional alternatives in the following order, utilizing all pre-disposition evidence and testimony presented in the case relative to the juvenile offender's particular background and the current capabilities of the correctional system in dealing most effectively with him:

- A. Unconditional release;
- B. A fine;
- C. Conditional release;
- D. Restitution to the victim by the offender, together with probation;
- E. Conditional release under probation or other governmental supervision;
- F. Placement in a halfway house or other residential facility located in the community;
- G. Partial confinement in a correctional facility with opportunity to participate in community-based work, training or educational programs; and
- H. Total confinement in a correctional facility.

In each case, the presiding judge shall articulate the reasons for selecting or rejecting each alternative disposition, or combination of dispositions, and these reasons shall be made a part of the record of the case.

2. Factors in the dispositional decision.

A. Factors that would justify confinement may include but shall not be limited to those indicating that:

- (1) There is undue risk that the offender will commit another crime if not confined;
- (2) The offender is in need of correctional services that can be provided effectively only in an institutional setting and such services are reasonably available; and
- (3) Any other alternative will deprecate the deterrent value of the disposition relative to the seriousness of the offense.

B. Factors justifying commitment to noninstitutional dispositions may include but shall not be limited to those indicating that:

- (1) The offender's offense neither caused nor actually threatened serious harm;
- (2) The offender had led a law-abiding life for a substantial period of time before commission of the present offense;
- (3) The offender is likely to respond affirmatively to probationary or other community supervision;
- (4) The victim of the offense induced or facilitated its commission;
- (5) The offender has made or will make restitution or reparation to the victim of his offense for the damage or injury which was sustained;
- (6) The offender's conduct was the result of circumstances unlikely to recur;
- (7) The character, history and present condition of the offender indicate that he is unlikely to commit another offense; and
- (8) The correctional programs within the institutions to which the offender could be sent are inappropriate to his particular needs or would not likely be of benefit to him.

Sec. 5. Appropriation. There is appropriated from the General Fund to the Department of Mental Health and Corrections the sum of \$104,920 to carry out the purposes of this Act. The breakdown shall be as follows:

	1975-76	1976-77
MENTAL HEALTH AND CORRECTIONS,		
DEPARTMENT OF		
Division of Probation and Parole		
Personal Services	(5) \$46,082	(5) \$48,331
All Other	5,141	5,366
	<hr/> \$51,223	<hr/> \$53,697

STATEMENT OF FACT

The purpose of this Act is to require mandatory pre-sentence reports in juvenile and felony prosecutions.