

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1018

H. P. 816

House of Representatives, March 5, 1979

On Motion of Mr. Hughes of Auburn, referred to the Committee on Judiciary.
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Lewis of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT to Require that Persons Convicted of Habitually Sexually Molesting a
Child under the Age of 14 May be Asexualized.**

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

Sec. 1. 15 MRSA c. 301, sub-c V is enacted to read:

SUBCHAPTER V

EXECUTION OF SENTENCE OF ASEXUALIZATION

§ 1871. Transfer to State Prison

When a person is sentenced to be asexualized, the judgment of the court shall direct the sheriff of the county in which the trial was had to cause the person to be removed from the county jail to the State Prison. Unless otherwise directed by an appropriate court order, the person shall be kept in the State Prison pending the review of the sentence by the Supreme Judicial Court.

§ 1872. Issuance of warrant

When a person has been sentenced to be asexualized, and the sentence has been reviewed and affirmed by the Supreme Judicial Court, the clerk of the trial court shall prepare a certified copy and the court shall issue a warrant having the copy

of the record attached to it. The warrant shall be transmitted to the warden of the State Prison directing him to cause that person to be asexualized, in accordance with the warrant.

§ 1873. Stay of sentence

The execution of a sentence of asexualization may be stayed only by the trial court or the Supreme Judicial Court or incident to an appeal or collateral proceeding.

§ 1874. Proceedings when person sentenced to be asexualized appears to be mentally ill

1. Examination by psychiatrists. When the trial court is informed that a person under sentence of asexualization may be mentally ill, it shall stay execution of the sentence and appoint a commission of 3 psychiatrists to examine the convicted person. The court shall notify the psychiatrists in writing that they are to examine the person to determine whether he understands the nature and effect of the asexualization sentence and why it is to be imposed upon him. 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 shall appoint counsel to represent him.

2. Issuance of warrant. After receiving the report of the commission, if the court decides that the convicted person has the mental capacity to understand the nature of the asexualization penalty and the reasons why it was imposed upon him, it shall issue a warrant to the warden directing him to cause that person to be asexualized, in accordance with the warrant.

3. Committed to mental health institute. If the court decides that the convicted person does not have the mental capacity to understand the nature of the asexualization penalty and why it was imposed on him, it shall have him committed to a state mental health institute.

4. Determination of sanity. When a person under sentence of asexualization has been committed to a state mental health institute, he shall be kept there until the proper official of the institute determines that he has been restored to sanity. The institute official shall notify the court of his determination and the court shall appoint another commission to proceed as provided in subsection 1.

5. Appointment of psychiatrists. The court shall allow reasonable fees to psychiatrists appointed under this section, which shall be paid by the State.

§ 1875. Proceedings when a person to be asexualized appears to be pregnant

1. Examination by physician. When the trial court is informed that a person sentenced to be asexualized may be pregnant, it shall stay execution of the sentence and appoint a qualified physician to examine the convicted person and determine if she is pregnant.

2. **Issuance of warrant after report of physician.** After receiving the report of the physician, if the court determines that the convicted person is not pregnant, it shall issue a warrant to the warden directing him to cause that person to be asexualized in accordance with the warrant.

3. **Issuance of warrant due to no longer being pregnant.** If the court determines that a convicted person whose asexualization has been stayed because of pregnancy is no longer pregnant, it shall issue a warrant to the warden directing him to cause that person to be asexualized in accordance with the warrant.

4. **Fee to physician.** The court shall allow a reasonable fee to the physician appointed under this section, which shall be paid by the State.

§ 1876. Return of warrant

After the person has been asexualized, the warden of the State Prison shall return to the court the warrant and a signed statement that the asexualization has been carried out.

Sec. 2. 15 MRSA § 2115, 2nd ¶, first sentence, 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 asexualization, if 3 justices concur, the judgment shall be reversed and may be remanded for a new trial.

Sec. 3. 15 MRSA § 2118 is enacted to read:

§ 2118. Review of sentence of asexualization

1. **Automatic sentence review.** Whenever a person is sentenced to be asexualized, the Supreme Judicial Court shall review the sentence in accordance with this section. The sentence review shall be automatic and shall be in addition to a consideration of any errors raised on direct appeal, provided that, if a direct appeal is taken, the appeal and the sentence review shall be consolidated. For purposes of the sentence review, the entire record of the proceedings of the trial court shall be transmitted to the Supreme Judicial Court.

2. **Excessive or disproportionate sentence.** With regard to the review of 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 shall have the authority, in addition to any of its other powers, to set aside the sentence.

3. **Direct appeal.** The sentence review and the direct appeal, if any, shall have priority over other cases and shall be heard in accordance with any rules which the Supreme Judicial Court may prescribe to implement this section. Notwithstanding any other provision of law, no sentence of asexualization shall be carried out unless the sentence has been reviewed and affirmed in accordance with this section.

Sec. 4. 17-A MRSA § 253, sub-§ 4-A is enacted to read:

4-A. Any person who is an habitual sexual offender as defined in section 1261, subsection 2, shall, in addition to any sentence imposed pursuant to subsection 4, be held for a separate sentencing proceeding to determine whether that person should be asexualized, in accordance with chapter 51-A.

Sec. 5. 17-A c. 51-A is enacted to read:

CHAPTER 51-A
SENTENCE FOR HABITUAL SEXUAL OFFENDER
SUBCHAPTER I
DEFINITIONS

§ 1261. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Asexualization means:

A. In reference to males, the medical procedure whereby the nerves in the penis are severed in such a manner as to render the penis incapable of erection; or

B. In reference to females, the operation of salpingectomy.

2. Habitual sexual offender means a person who has attained the age of 18 and who after the effective date of this section, is convicted a 2nd or subsequent time of rape or gross sexual misconduct with a person who has not in fact attained his 14th birthday.

SUBCHAPTER II
SENTENCES FOR
HABITUAL SEXUAL OFFENDERS

§ 1271. Authorized sentence

Any person who is convicted as an habitual sexual offender, shall be sentenced in accordance with section 253, except that a proceeding shall be held to determine if an additional sentence of asexualization shall be imposed. The proceeding shall be conducted in accordance with the procedures set forth in this chapter and if that proceeding results in findings by the court that the person shall be asexualized, the court shall order, in addition to any sentence imposed pursuant to section 253, that the person be asexualized.

§ 1272. Proceedings to determine sentence of asexualization

1. When a person is convicted as an habitual sexual offender, the court shall conduct a separate sentencing proceeding to determine whether the person should

be asexualized, as authorized in section 1271. The proceeding shall 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 is unable to participate in the sentencing proceeding, alternate jurors who were present during the trial, but who did not participate in the deliberations and verdict thereof, may be substituted for jurors who did participate. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant.

2. In the sentencing proceeding, evidence may be presented as to any matter that the court deems relevant to sentencing, and shall include matters relating to any of the factors for or against asexualization in subsections 5 and 6 and matters relating to whether or not the defendant may be asexualized without detriment to his general health and whether or not society has a compelling interest in the asexualization of the defendant. Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is afforded a fair opportunity to rebut hearsay statements; except that this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of Maine. The State, the defendant and counsel for the defendant shall be permitted to present argument for or against a sentence of asexualization.

3. After hearing all of the evidence, the jury shall deliberate and shall recommend to the court either that the defendant be asexualized or that the defendant not be asexualized. The recommendation of the jury shall be based upon its consideration of the factors for and against asexualization set out in subsections 5 and 6 and its consideration of whether or not the defendant may be asexualized without detriment to his general health and whether or not society has a compelling interest in the asexualization of the defendant. The jury shall not recommend a sentence of asexualization unless it finds that:

- A. The factors for asexualization outweigh those against asexualization;
- B. The defendant may be asexualized without detriment to his general health; and
- C. Society has a compelling interest in the asexualization of the defendant.

4. If the jury recommends a sentence of asexualization, or if the defendant has waived his right to a jury, the court shall, after a consideration of the factors for and against asexualization and whether or not the defendant may be asexualized without detriment to his general health and whether or not society has a compelling interest in the asexualization of the defendant, impose a sentence of asexualization or order that the defendant not be asexualized; provided that it shall not impose a sentence of asexualization unless it finds that:

- A. The factors for asexualization outweigh those against asexualization;
- B. The defendant may be asexualized without detriment to his general health; and

C. Society has a compelling interest in the asexualization of the defendant.

In each case in which the court imposes a sentence of asexualization, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections 5 and 6 and upon the records of the trial and the sentencing proceedings.

5. The factors for asexualization referred to in this section shall be limited to the following:

A. That the rape or gross sexual misconduct of which the defendant was convicted was especially heinous, atrocious or cruel;

B. That the defendant was previously convicted of another sexual offense, other than rape or gross sexual misconduct;

C. The defendant knowingly created a great risk of death or serious bodily injury to the victim or another person;

D. That the rape or gross sexual misconduct was committed while the defendant was engaged in, or was an accomplice in, the commission of or an attempt to commit murder or a Class A or Class B crime;

E. The age of the victim;

F. That the rape or gross sexual misconduct involved the infliction of bodily pain on the victim; and

G. That the rape or gross sexual misconduct was accomplished through compulsion or by the threat that death, serious bodily injury or kidnapping would be inflicted on the victim or on any other human being.

No factor for asexualization may be considered by the jury or the court unless its existence has been proven beyond a reasonable doubt.

6. The factors against asexualization referred to in this section shall be limited to the following:

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

B. The rape or gross sexual misconduct was committed while the person was under the influence of extreme mental or emotional disturbance;

C. The victim consented to the rape or gross sexual misconduct;

D. The defendant was an accomplice in the rape or gross sexual misconduct rather than an actual participant in the sexual act; and

E. At the time of the rape or gross sexual misconduct, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired.

STATEMENT OF FACT

This bill provides that persons who are convicted 2 or more times of sexually molesting a child who has not attained his or her 14th birthday may be asexualized.