

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION

2  
3 ONE HUNDRED AND TWELFTH LEGISLATURE

4  
5 Legislative Document

No. 861

6  
7 H.P. 591

House of Representatives, February 28, 1985

8 On Motion of Representative Kane of S. Portland, referred to the  
9 Committee on Judiciary. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Callahan of Mechanic Falls.

11 Cosponsored by Senator McBreairty of Aroostook and Representative  
Conners of Franklin.

12 STATE OF MAINE

13  
14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE

16  
17 AN ACT to Reinstate the Death Penalty.

18  
19 Be it enacted by the People of the State of Maine as  
20 follows:

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

23 SUBCHAPTER V

24 EXECUTION OF SENTENCE OF DEATH

25 §1851. Transfer to State Prison

26 When a person is sentenced to death, the judgment  
27 of the court shall direct the sheriff of the county  
28 in which the trial was had to cause the person to be  
29 removed from the county jail to the State Prison.  
30 Unless otherwise directed by an appropriate court or  
31 der, the person shall be kept in the State Prison  
32 pending the review of the sentence by the Supreme Ju-  
33 dicial Court.

1     §1852. Issuance of warrant by Governor

2             When a person has been sentenced to death and the  
3 sentence has been reviewed and affirmed by the Su-  
4 preme Judicial Court, the clerk of the trial court  
5 shall prepare a certified copy of the record of the  
6 judgment and the sheriff shall transmit the record to  
7 the Governor. The sentence shall not be executed un-  
8 til the Governor issues a warrant, attaches it to the  
9 copy of the record and transmits it to the warden of  
10 the State Prison, directing him to execute the sen-  
11 tence at a time specified in the warrant.

12     §1853. Stay of execution of death sentence

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

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

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

34             2. Issuance of warrant. After receiving the re-  
35 port of the commission, if the Governor decides that  
36 the convicted person has the mental capacity to un-  
37 derstand the nature of the death penalty and the rea-  
38 sons why it was imposed upon him, he shall issue a  
39 warrant to the warden directing him to execute the  
40 sentence at a time designated in the warrant.

1           3. Committed to mental health institute. If the  
2 Governor decides that the convicted person does not  
3 have the mental capacity to understand the nature of  
4 the death penalty and why it was imposed on him, he  
5 shall have him committed to a state mental health in-  
6 stitute.

7           4. Determination of sanity. When a person under  
8 sentence of death has been committed to a state men-  
9 tal health institute, he shall be kept there until  
10 the proper official of the institute determines that  
11 he has been restored to sanity. The institute offi-  
12 cial shall notify the Governor of his determination  
13 and the Governor shall appoint another commission to  
14 proceed as provided in subsection 1.

15           5. Appointment of psychiatrists. The Governor  
16 shall allow reasonable fees to psychiatrists ap-  
17 pointed under this section, which shall be paid by  
18 the State.

19       §1855. Proceedings when person sentenced to death  
20 appears to be pregnant

21           1. Examination by physician. When the Governor  
22 is informed that a person under sentence of death may  
23 be pregnant, he shall stay execution of the sentence  
24 and appoint a qualified physician to examine the con-  
25 victed person and determine if she is pregnant.

26           2. Issuance of warrant after report of the phy-  
27 sician. After receiving the report of the physician,  
28 if the Governor determines that the convicted person  
29 is not pregnant, he shall issue a warrant to the war-  
30 den directing him to execute the sentence at a time  
31 designated in the warrant.

32           3. Issuance of warrant due to no longer being  
33 pregnant. If the Governor determines that a convict-  
34 ed person whose execution has been stayed because of  
35 pregnancy is no longer pregnant, he shall issue a  
36 warrant to the warden directing him to execute the  
37 sentence at a time designated in the warrant.

38           4. Fee to physician. The Governor shall allow a  
39 reasonable fee to the physician appointed under this  
40 section, which shall be paid by the State.

1 §1856. Unjustifiable failure to execute sentence of  
2 death

3 If a death sentence is not executed because of an  
4 unjustified failure of the Governor to issue a war-  
5 rarrant or for any other unjustifiable reason, the Su-  
6 preme Judicial Court shall, upon application by the  
7 Attorney General, issue a warrant directing the sen-  
8 tence to be executed at a time specified in the war-  
9 rarrant.

10 §1857. Execution of death sentence

11 1. Execution. A death sentence shall be exe-  
12 cuted by electrocution. The warden of the State  
13 Prison shall designate the executioner. The warrant  
14 authorizing the execution shall be read to the con-  
15 victed person immediately before execution.

16 2. Warden or designee. The warden of the State  
17 Prison or his designee shall be present at the execu-  
18 tion. The execution shall be carried out at the time  
19 specified in the warrant or as soon as possible  
20 thereafter.

21 3. Witnesses. Twelve citizens selected by the  
22 warden shall witness the execution. The Chief Medi-  
23 cal Examiner or his designee shall be present to cer-  
24 tify the death of the convicted person. Counsel for  
25 the convicted person and clergymen requested by the  
26 convicted person may be present. Representatives of  
27 the news media may be present under regulations ap-  
28 proved by the Commissioner of Corrections. All other  
29 persons, except prison officers and guards, shall be  
30 excluded.

31 4. Disposal of bodies. The body of the convict-  
32 ed person shall be disposed of in the same manner as  
33 the bodies of inmates who die of natural causes in  
34 the State Prison.

35 §1858. Return of warrarrant of execution

36 After the death sentence has been executed, the  
37 warden of the State Prison shall return to the Gover-  
38 nor the warrant and a signed statement of execution,  
39 provided that, if the sentence has been executed pur-

1 suant to a warrant issued by the Supreme Judicial  
2 Court, the warden shall return the warrant and the  
3 statement to the court and send an attested copy to  
4 the Governor. The warden shall file an attested copy  
5 of the warrant and statement with the clerk of the  
6 court that imposed the sentence.

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

9       In an appeal from a judgment imposing a sentence  
10 of imprisonment for life or a sentence of death, if 3  
11 justices concur, the judgment shall be reversed and  
12 may be remanded for a new trial. In all other criminal  
13 cases, the judgment shall be affirmed, unless a  
14 majority of the justices sitting and qualified to act  
15 in the case concur in its reversal.

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

17 §2118. Review of death sentence

18       1. Automatic sentence review. Whenever a person  
19 is sentenced to death, the Supreme Judicial Court  
20 shall review the sentence in accordance with this  
21 section. The sentence review shall be automatic and  
22 shall be in addition to a consideration of any errors  
23 raised on direct appeal, provided that, if a direct  
24 appeal is taken, the appeal and the sentence review  
25 shall be consolidated. For purposes of the sentence  
26 review, the entire record of the proceedings of the  
27 trial court shall be transmitted to the Supreme Judi-  
28 cial Court.

29       2. Excessive or disproportionate sentence. With  
30 regard to the review of the sentence, the court shall  
31 determine whether the sentence is excessive or dis-  
32 proportionate to the sentence imposed in similar  
33 cases, if any, considering both the crime and the de-  
34 fendant. If the court finds the sentence excessive  
35 or disproportionate to the sentence imposed in simi-  
36 lar cases, the court may, in addition to any of its  
37 other powers, set aside the sentence and remand the  
38 case to the trial court for the imposition of a sen-  
39 tence of life imprisonment.

1           3. Direct appeal. The sentence review and the  
2 direct appeal, if any, shall have priority over other  
3 cases and shall be heard in accordance with any rules  
4 which the Supreme Judicial Court may prescribe to im-  
5 plement this section. Notwithstanding any other pro-  
6 vision of law, no sentence of death may be executed  
7 unless the sentence has been reviewed and affirmed in  
8 accordance with this section.

9           Sec. 4. 17-A MRSA §201, sub-§2, as repealed and  
10 replaced by PL 1977, c. 510, §38, is repealed and  
11 the following enacted in its place:

12           2. The sentence for murder shall be as autho-  
13 riized in chapter 51-A.

14           Sec. 5. 17-A MRSA §1251, as repealed and re-  
15 placed by PL 1983, c. 673, §3, is repealed.

16           Sec. 6. 17-A MRSA c. 51-A is enacted to read:

17                                   CHAPTER 51-A

18                                   SENTENCES FOR MURDER

19           §1261. Authorized sentences

20           A person who has been convicted of murder shall  
21 be sentenced to life imprisonment, unless a proceed-  
22 ing to determine sentence, conducted in accordance  
23 with the procedures set forth in this chapter, re-  
24 sults in findings by the court that the person shall  
25 be sentenced to death, in which case, the person  
26 shall be sentenced to death.

27           §1262. Proceeding to determine sentence for murder

28           1. When a person is convicted of murder, the  
29 court shall conduct a separate sentencing proceeding  
30 to determine whether the person should be sentenced  
31 to death or life imprisonment, as authorized by sec-  
32 tion 1261. The proceeding shall be conducted by the  
33 trial judge before the trial jury as soon after the  
34 conviction as possible. If one or more members of  
35 the trial jury are unable to participate in the sen-  
36 tencing proceeding, alternate jurors who were present  
37 during the trial, but who did not participate in the

1 deliberations and verdict thereof, may be substituted  
2 for jurors who did participate. If the trial jury  
3 has been waived, or if the defendant pleaded guilty,  
4 the sentencing proceeding shall be conducted before a  
5 jury impaneled for that purpose, unless waived by the  
6 defendant.

7       2. In the sentencing proceeding, evidence may be  
8 presented as to any matter that the court deems rele-  
9 vant to sentence, and shall include matters relating  
10 to any of the aggravating or mitigating circumstances  
11 in subsections 5 and 6. Any such evidence which the  
12 court deems to have probative value may be received,  
13 regardless of its admissibility under the  
14 exclusionary rules of evidence, provided that the de-  
15 fendant is afforded a fair opportunity to rebut hear-  
16 say statements; except that this subsection shall not  
17 be construed to authorize the introduction of any ev-  
18 idence secured in violation of the Constitution of  
19 the United States or the Constitution of Maine. The  
20 State, the defendant and the counsel for the defend-  
21 ant shall be permitted to present argument for or  
22 against a sentence of death.

23       3. After hearing all of the evidence, the jury  
24 shall deliberate and shall recommend to the court ei-  
25 ther a sentence of life imprisonment or a sentence of  
26 death. The recommendation of the jury shall be based  
27 upon its consideration of the aggravating circum-  
28 stances and the mitigating circumstances in subsec-  
29 tions 5 and 6, provided that the jury shall not rec-  
30 ommend a sentence of death unless it finds that the  
31 aggravating circumstances outweigh the mitigating  
32 circumstances. If the jury recommends a sentence of  
33 life imprisonment or if the jury is unable to reach a  
34 unanimous recommendation, the court shall impose a  
35 sentence of life imprisonment.

36       4. If the jury recommends a sentence of death or  
37 if the defendant has waived his right to a jury, the  
38 court shall, after a consideration of the aggravating  
39 circumstances and the mitigating circumstances in  
40 subsections 5 and 6, impose either a sentence of life  
41 imprisonment or a sentence of death, provided that it  
42 shall not impose a sentence of death unless it finds  
43 that the aggravating circumstances outweigh the miti-  
44 gating circumstances. In each case in which the



1 court imposes the death sentence, the determination  
2 of the court shall be supported by specific written  
3 findings of fact based upon the circumstances in sub-  
4 sections 5 and 6 and upon the records of the trial  
5 and the sentencing proceedings.

6 5. The aggravating circumstances referred to in  
7 this section shall be limited to the following.

8 A. The murder was committed by a person under  
9 sentence of imprisonment.

10 B. The defendant was previously convicted of an-  
11 other Class A or Class B crime involving the use  
12 or threat of violence to the person.

13 C. The defendant knowingly created a great risk  
14 of death to 4 or more persons.

15 D. The murder was committed while the defendant  
16 was engaged in, or was an accomplice in, the com-  
17 mission of or an attempt to commit any of the  
18 Class A or Class B crimes enumerated in chapters  
19 9, 11, 13, 17, 27 and 33.

20 E. The murder was committed for the purpose of  
21 avoiding or preventing a lawful arrest or effect-  
22 ing an escape from custody.

23 F. The murder was committed for pecuniary gain.

24 G. The murder was committed to disrupt or hinder  
25 the lawful exercise of any governmental function  
26 or the enforcement of laws.

27 H. The murder was especially heinous, atrocious  
28 or cruel.

29 No aggravating circumstance may be considered by the  
30 jury or the court unless its existence has been  
31 proven beyond a reasonable doubt.

32 6. The mitigating circumstances referred to in  
33 this section shall include the following:

34 A. The person has no significant history of pri-  
35 or criminal activity;

- 1           B. The murder was committed while the person was  
2           under the influence of extreme mental or emotion-  
3           al disturbance;
- 4           C. The victim was a participant in the person's  
5           homicidal conduct or consented to the homicidal  
6           act;
- 7           D. The murder was committed under circumstances  
8           which the person believed to provide a moral jus-  
9           tification or extenuation for his conduct;
- 10          E. The person was an accomplice in a murder com-  
11          mitted by another and his participation in the  
12          murder was relatively minor;
- 13          F. The person acted under duress or under the  
14          domination of another person;
- 15          G. At the time of the murder, the capacity of  
16          the person to appreciate the wrongfulness of his  
17          conduct or to conform his conduct to the require-  
18          ments of the law was impaired; and
- 19          H. The age of the person at the time of the  
20          crime.

21        §1263. Appeal of prior murder conviction

22           In the event a person has been convicted of murder  
23           under section 201, and the prior offense upon  
24           which the conviction was based is finally invalidated  
25           as a result of an appeal or collateral proceeding and  
26           retrial, if any, the person may petition a court of  
27           competent jurisdiction to be resentenced pursuant to  
28           section 1261. If the conviction under section 201  
29           resulted in the imposition of a sentence of death and  
30           the conviction for the prior offense is on appeal or  
31           is the subject of a collateral proceeding, the sen-  
32           tence of death shall not be executed until after the  
33           final disposition of the appeal, collateral proceed-  
34           ing and retrial, if any.

35           Sec. 7. Statutory referendum procedure; submis-  
36           sion at statewide election; form of question; effec-  
37           tive date. This Act shall be submitted to the legal  
38           voters of the State of Maine at a statewide election

1 to be held on the Tuesday following the first Monday  
2 of November following passage of this Act. The city  
3 aldermen, town selectmen and plantation assessors of  
4 this State shall notify the inhabitants of their re-  
5 spective cities, towns and plantations to meet, in  
6 the manner prescribed by law for holding a statewide  
7 election, to vote on the acceptance or rejection of  
8 this Act by voting on the following question:

9 "Shall An Act to Reinstate the Death Penalty be-  
10 come law?"

11 The legal voters of each city, town and  
12 plantation shall vote by ballot on this question, and  
13 shall designate their choice by a cross or check mark  
14 placed within a corresponding square below the word  
15 "Yes" or "No." The ballots shall be received,  
16 sorted, counted and declared in open ward, town and  
17 plantation meetings and returns made to the Secretary  
18 of State in the same manner as votes for members of  
19 the Legislature. The Governor shall review the re-  
20 turns and, if it appears that a majority of the legal  
21 votes are in favor of the Act, the Governor shall  
22 proclaim that fact without delay, and the Act shall  
23 become effective 30 days after the date of the proc-  
24 lamation.

25 The Secretary of State shall prepare and furnish  
26 to each city, town and plantation all ballots, re-  
27 turns and copies of this Act necessary to carry out  
28 the purpose of this referendum.

29 STATEMENT OF FACT

30 The purpose of this bill is to reinstate the  
31 death penalty by way of referendum.

32 0442121784