

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1335

7
8 S.P. 497

In Senate, April 17, 1985

9 Reference to the Committee on Judiciary suggested and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

11 Presented by Senator Carpenter of Aroostook.
12

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT to Amend Certain Aspects of Criminal
19 Homicide in the Maine Criminal Code.
20

21 Emergency preamble. Whereas, Acts of the Legis-
22 lature do not become effective until 90 days after
23 adjournment unless enacted as emergencies; and

24 Whereas, the present definition in the Maine Re-
25 vised Statutes, Title 17-A, section 201, subsection
26 1-A has been found not to reflect closely enough
27 present Maine case law upon which its enactment in
28 1983 was based; and

29 Whereas, that finding has caused and will contin-
30 ue to cause a serious impediment to the use of the
31 depraved indifference murder alternative by the
32 State; and

33 Whereas, the Maine Criminal Code does not ex-
34 pressly declare criminally negligent manslaughter to
35 be charged when the greater offense of depraved
36 indifference murder is charged; and

1 1-A unnecessarily imperils the intended meaning of
2 the "fault" element and, in practical effect, creates
3 a serious impediment to the use of the depraved
4 indifference murder alternative by the State. As a
5 consequence, it is best to repeal this law, allowing
6 the recent Maine Law Court decisions to wholly control.
7

8 Basis for replacement language.

9 Although the Maine Law Court has previously had
10 occasion to find that criminally negligent manslaughter
11 is a "lesser included offense" of depraved
12 indifference murder, State v. Goodall, 407 A.2d 268,
13 280 n.17 (Me. 1979), recently the continued viability
14 of this finding has come into question at the trial
15 level in State v. Michaud, No. CR-84-607 (Me. Super.
16 Ct., Ken. Cty.) on the ground that, unlike criminal
17 negligence, the risk analysis relative to depraved
18 indifference murder includes "serious bodily injury"
19 as well as "death." See generally, State v. Crocker,
20 435 A.2d 58, 63, 67 (Me. 1981); State v. Joy, 452
21 A.2d 408, 411 (Me. 1982). The new language of subsection
22 1-A is designed to eliminate any potential problem
23 by expressly declaring that when the depraved
24 indifference murder alternative is charged, criminally
25 negligent manslaughter is automatically an alternative
26 for the fact finder if a rational basis exists
27 for considering it.

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