

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1082

S.P. 416

In Senate, April 10, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President PRAY of Penobscot.

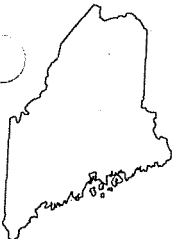
Cosponsored by Representative CONSTANTINE of Bar Harbor, Representative ROTONDI of Athens and Senator HOBBS of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Increase the Penalty for Major Cocaine Traffickers and to Encourage Cooperation with Prosecutors.

(After Deadline)



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

3 **Sec. 1. 17-A MRSA §1252, sub-§5-A,** as enacted by PL 1987, c.
535, §7, is amended to read:

5 5-A. Notwithstanding any other provision of this Code, for
7 a person convicted of violating section 1105:

9 A. Except as otherwise provided in paragraphs B and C, the
11 minimum sentence of imprisonment, which shall not be
suspended, shall be as follows: When the sentencing class is
13 Class A, the minimum term of imprisonment shall be 4 5
years; when the sentencing class is Class B, the minimum
15 term of imprisonment shall be 2 3 years; and, with the
exception of trafficking or furnishing marijuana under
17 section 1105, when the sentencing class is Class C, the
minimum term of imprisonment shall be one year;

19 B. The court may impose a sentence other than a minimum
21 unsuspended term of imprisonment set forth in paragraph A,
if:

23 (1) The court finds by substantial evidence that:

25 (a) Imposition of a minimum unsuspended term of
27 imprisonment under paragraph A will result in
substantial injustice to the defendant. In making
29 this determination, the court shall consider,
among other considerations, whether the defendant
31 did not know and reasonably should not have known
that the victim was under 18 years of age;

33 (b) Failure to impose a minimum unsuspended term
35 of imprisonment under paragraph A will not have an
adverse effect on public safety; and

37 (c) Failure to impose a minimum unsuspended term
39 of imprisonment under paragraph A will not
appreciably impair the effect of paragraph A in
41 deterring others from violating section 1105; and

43 (2) The court finds that:

45 (a) The defendant has no prior criminal history;
and

47 (b) The defendant is an appropriate candidate for
49 an intensive supervision program, but would be
ineligible to participate under a sentence imposed
51 under paragraph A; ~~or~~ and

1 (c) The defendant's background, attitude and
3 prospects for rehabilitation and the nature of the
5 victim and the offense indicate that imposition of
7 a sentence under paragraph A would frustrate the
9 general purposes of sentencing set forth in
11 section 1151.

13 If the court imposes a sentence under this paragraph, the
15 court shall state in writing its reasons for its findings
17 and for imposing a sentence under this paragraph rather than
19 under paragraph A; and

21 C. If the court imposes a sentence under paragraph B, the
23 minimum sentence of imprisonment, which shall not be
25 suspended, shall be as follows: When the sentencing class is
27 Class A, the minimum term of imprisonment shall be 9 months;
29 when the sentencing is Class B, the minimum term of
31 imprisonment shall be 6 months; and, with the exception of
33 trafficking or furnishing marijuana under section 1105, when
35 the sentencing class is Class C, the minimum term of
37 imprisonment shall be 3 months.

39 **Sec. 2. 17-A MRSA §1252, sub-§5-B** is enacted to read:

41 5-B. Notwithstanding any other provision of this Code, for
43 a person convicted of violating section 1105, subsection 1:

45 A. Except as otherwise provided in paragraph B, the minimum
47 sentence of imprisonment, which shall not be suspended, is
49 10 years.

51 B. Upon motion of the attorney for the State requesting
53 consideration of the factors presented under paragraph C,
55 the court may impose a sentence other than the minimum
57 unsuspended term of imprisonment set forth in paragraph A,
59 but in no event less than 5 years, if the court finds, by
61 substantial evidence, that the defendant has made a good
63 faith effort to provide substantial assistance in the
65 investigation or prosecution of a criminal offense or
67 offenses, committed by another or others.

69 C. In determining whether a defendant has made a good faith
71 effort to provide substantial assistance in the
73 investigation or prosecution of a criminal offense or
75 offenses committed by another or others, the court shall
77 consider the following factors:

79 (1) The court's evaluation of the significance and
81 usefulness of the defendant's assistance, giving
83 substantial weight to the State's evaluation of the

1 defendant's assistance, particularly when the value and
2 extent of the assistance are difficult to ascertain;

3
4 (2) The truthfulness, completeness and reliability of
5 any information or testimony provided by the defendant;

6
7 (3) The nature and extent of the defendant's
8 assistance;

9
10 (4) Any injury suffered, or any danger or risk of
11 injury to the defendant or the defendant's family
12 resulting from the defendant's assistance; and

13
14 (5) The timeliness of the defendant's assistance.

15
16 D. If the court imposes a sentence under paragraph B, the
17 court shall state in writing or on the record its reasons
18 for its findings and for imposing that sentence.

19
20 E. Notwithstanding a motion made by the State pursuant to
21 paragraph B, the State may argue, based upon the factors
22 enumerated in paragraph C, that the defendant's cooperation
23 does not merit a departure from the minimum unsuspended term
24 of imprisonment imposed by paragraph A.

25
26 F. Any written statement filed with the court pursuant to
27 this subsection, detailing the nature and extent of the
28 defendant's assistance or a written plea agreement, may be
29 sealed and impounded by the court for a reasonable period
30 upon motion of the attorney for the State certifying:

31
32 (1) That the statement of the defendant's assistance
33 or the plea agreement requiring that assistance is the
34 subject matter of an ongoing criminal investigation; and

35
36 (2) That the disclosure of the details contained in
37 the statement may reasonably hamper or impede that
38 investigation.

41 STATEMENT OF FACT

42
43 Section 1 increases the minimum mandatory sentences by one
44 year for certain Class A and Class B drug offenses to which a
45 minimum already applies. Section 1 also makes it clear that all
46 of the indicia for successful rehabilitation must be found before
47 the defendant can avoid the statutory minimum.

48
49 Section 2 creates a 10-year mandatory minimum term for
convicted major drug offenders.

1 The State can move to reduce the mandatory minimum to 5
3 years if the defendant provides substantial assistance in the
5 investigation or prosecution of a criminal offense committed by
7 another. The State's motion does not limit the court to a 5-year
9 sentence, but it does allow the sentencing court to take into
11 account the value of the defendant's cooperation. The court may
also take into consideration the defendant's lack of cooperation
if the defendant's efforts, after agreeing to cooperate, prove to
be less than sincere or useful. This bill is a component of the
Attorney General's drug enforcement legislative package.