

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1340, L.D. 1932, Bill, "An Act to Correct a Conflict in the Law Relating to Sentencing Considerations and Appellate Review"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 15 MRSA §2154, sub-§1, as enacted by PL 1989, c. 218, §5, is repealed and the following enacted in its place:

1. Sentence correction. To provide for the correction of sentences imposed without due regard for the sentencing factors set forth in this chapter:

Sec. 2. 15 MRSA §2155, as enacted by PL 1989, c. 218, §5, is amended to read:

§2155. Factors to be considered by Supreme Judicial Court

In reviewing a criminal sentence, the Supreme Judicial Court ~~is-authorized-to~~ shall consider:

1. Propriety of sentence. The propriety of the sentence, having regard to the nature of the offense, the character of the offender, and the protection of the public interest, the effect of the offense on the victim and any other relevant sentencing factors recognized under law; and

2. Manner in which sentence was imposed. The manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.

Sec. 3. 15 MRSA §2156, sub-§1, as enacted by PL 1989, c. 218, §5, is repealed.

2 Sec. 4. 15 MRSA §2156, sub-§1-A is enacted to read:

4 1-A. Remand. If the Supreme Judicial Court determines that
6 relief should be granted, it must remand the case to the court
8 that imposed the sentence for any further proceedings that could
10 have been conducted prior to the imposition of the sentence under
 review and for resentencing on the basis of such further
 proceedings provided that the sentence is not more severe than
 the sentence appealed.

12 Emergency clause. In view of the emergency cited in the
14 preamble, this Act takes effect when approved.

16 FISCAL NOTE

 This bill requires the Supreme Judicial Court to remand a
18 case to the sentencing court for resentencing if relief from the
20 ~~original sentence is necessary.~~ ~~The additional work load and~~
 administrative costs associated with additional remanded
22 sentencing hearings will be absorbed within the budgeted
 resources of the Judicial Department.'

24 STATEMENT OF FACT

26 This amendment replaces the text of the bill but retains the
28 emergency preamble.

30 The purpose of this amendment is to modify the sentencing
32 review factors in light of certain recent decisions of the Maine
 Supreme Judicial Court. Decisions such as State v. Lewis, No.____
34 (Me., April 19, 1991), State v. Michaud, No.____ (Me. May 2, 1991),
 and State v. Clark, No.____(Me. May 13, 1991), reveal the conflict
36 between the sentencing criteria in the Maine Criminal Code and
 the appellate review provisions in the Maine Revised Statutes,
38 Title 15, chapter 306-A. The Title 17-A provisions contain a
 number of criteria to be considered by the sentencing court in
40 every criminal case and a conflict occurs because different
 factors are indicated in the Title 15 review process. This
42 amendment resolves the apparent conflict that has arisen as a
 result of the different statutory mandates.

44 This amendment includes factors that a sentencing judge
46 considers as the factors the Supreme Judicial Court, sitting as a
 reviewing court, is required to consider. In addition to the
48 nature of the offense, the character of the offender and the
 protection of the public interest, this amendment requires the
50 court to consider the effect of the offense on the victim and any
 other relevant sentencing factors recognized under law. The term
 "law" is used to refer to not only statutorily required factors,

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2 but also considerations that have been developed through case
law. The court is required to consider the criminal record of
4 the defendant by the current law inclusion of "the character of
the offender" as a factor.

6 This amendment requires the Supreme Judicial Court to remand
the case to the sentencing court for resentencing if relief from
8 the original sentence is necessary. The Supreme Judicial Court
is not authorized to substitute its own sentence for the trial
10 court sentence. The sentencing court has had the opportunity to
view the defendant through the course of a trial or other court
12 proceeding and has had the opportunity to view the victim of the
defendant's crime. The Maine Rules of Criminal Procedure, Rule
14 40A already addresses which judge or justice conducts proceedings
or resentences on remand. Rule 40A provides that the Law Court
16 may specifically direct the judge or justice who imposed the
original sentence to handle the case on remand, that the Law
18 Court may specifically direct a judge or justice other than the
~~one who imposed the original sentence to handle the case on~~
20 remand or, if the Law Court does not specifically direct a
particular judge or justice to conduct proceedings or resentence
22 on remand, any judge or justice of the court to which the case is
remanded may handle the case.
24

Reported by the Committee on Judiciary
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