

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1932

H.P. 1340

House of Representatives, June 6, 1991

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 that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.

Cosponsored by Speaker MARTIN of Eagle Lake, Senator CAHILL of Sagadahoc and
Senator CLARK of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Correct a Conflict in the Law Relating to Sentencing
Considerations and Appellate Review.

(AFTER DEADLINE)

(EMERGENCY)



Emergency preamble. Whereas, Acts of the Legislature do not
2 become effective until 90 days after adjournment unless enacted
as emergencies; and

4
Whereas, recent decisions of the Maine Supreme Judicial
6 Court indicate that legislative clarification of sentencing
criteria and the role of a reviewing court is essential; and

8
Whereas, in the judgment of the Legislature, these facts
10 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
12 necessary for the preservation of the public peace, health and
safety; now, therefore,

14
Be it enacted by the People of the State of Maine as follows:

16
Sec. 1. 15 MRSA §2154, sub-§§1 to 4, as enacted by PL 1989, c.
18 **218, §5, are repealed and the following enacted in their place:**

20 1. Sentence correction. To provide for the correction of
22 sentences imposed without due regard for the sentencing criteria
and considerations set forth in this chapter;

24 2. Promote respect for law. To promote respect for law by
26 correcting abuses of discretion by sentencing courts and by
increasing the fairness of the sentencing process;

28 3. Rehabilitation. To facilitate the possible
30 rehabilitation of appropriate offenders; and

32 4. Sentencing criteria. To promote the fair and uniform
application of the statutory sentencing criteria set forth in
34 this chapter.

36 **Sec. 2. 15 MRSA §2154-A is enacted to read:**

38 **§2154-A. Discretion of the sentencing court**

40 The review of any sentence by the Supreme Judicial Court may
be for abuse of discretion by the sentencing court only. Nothing
42 in this chapter may be construed by the Supreme Judicial Court to
limit the discretion of the sentencing court in exercising the
44 full statutory range of punishments after due consideration of
all the sentencing criteria and sentencing considerations
46 provided in this chapter. The means or method employed by a
defendant to commit a particular offense may not be used by the
48 Supreme Judicial Court to establish a maximum sentence that is
less than the sentence established by the class of that offense.
50 All sentences must reflect the full consideration by the
sentencing court of all applicable sentencing criteria.

2 **Sec. 3. 15 MRSA §2155**, as enacted by PL 1989, c. 218, §5, is
amended to read:

4 **§2155. Factors to consider by Supreme Judicial Court**

6 In reviewing a criminal sentence, the Supreme Judicial Court
8 is authorized required to consider:

10 **1. Propriety of sentence.** The propriety of the sentence,
12 ~~having regard to the nature of the offense, the character of the~~
~~offender and the protection of the public interest; and for the~~
14 considerations and criteria set forth in Title 17-A, section
1151; Title 17-A, section 1252-B; Title 17-A, section 1257,
16 subsection 2; Title 17-A, section 1323; and any other
considerations and criteria required by statute; and

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

22 **Sec. 4. 15 MRSA §2156**, as enacted by PL 1989, c. 218, §5, is
repealed.

24 **Sec. 5. 15 MRSA §2156-A** is enacted to read:

26 **§2156-A. Relief**

28 **1. Standard of review.** The Supreme Judicial Court may
30 review sentences imposed on an abuse of discretion standard
only. A sentence imposed may not be overturned unless the
32 Supreme Judicial Court determines that the court below abused its
discretion in the application of sentencing criteria set forth in
34 Title 17-A, section 115; Title 17-A, section 1252-B; Title 17-A,
section 1257, subsection 2; Title 17-A, section 1323; and any
36 other considerations and criteria required by statute.

38 **2. Remand for sentence.** If the Supreme Judicial Court
40 determines that relief should be granted because the sentencing
court abused its discretion, it shall remand the case to the
42 sentencing court that imposed the sentence for any further
proceedings and for resentencing.

44 **3. Affirmation of sentence.** If the Supreme Judicial Court
46 determines that the court below did not abuse its discretion in
its application of sentencing criteria, it shall affirm the
48 sentence under review.

50 **Sec. 6. 17-A MRSA §1256, sub-§2**, as amended by PL 1983, c.
408, §4, is further amended to read:

2 2. In all other cases, the court shall state in the
3 sentence of imprisonment whether a sentence shall must be served
4 concurrently with or consecutively to any other sentence
5 previously imposed or to another sentence imposed on the same
6 date. The sentences shall must be concurrent unless, in
7 considering the following factors, the court decides to impose
8 sentences consecutively:

10 A. That the convictions are for offenses based on different
11 conduct or arising from different criminal episodes;

12 B. That the defendant was under a previously imposed
13 suspended or unsuspended sentence and was on probation,
14 under incarceration or on a release program at the time the
15 person committed a subsequent offense;

16 C. That the defendant had been released on bail when that
17 person committed a subsequent offense, either pending trial
18 of a previously committed offense or pending the appeal of
19 previous conviction; or

20 D. That the seriousness of the criminal conduct involved in
21 either a single criminal episode or in multiple criminal
22 episodes or the seriousness of the criminal record of the
23 convicted person, or both, require a sentence of
24 imprisonment in excess of the maximum available for the most
25 serious offense.
26
27
28

30 For purposes of this subsection, "criminal episode" means a
31 criminal act or a related series of criminal acts committed at or
32 about the same time and against the same victim. Criminal acts
33 against different victims constitute different criminal episodes.

34
35 **Emergency clause.** In view of the emergency cited in the
36 preamble, this Act takes effect when approved.

37
38 **STATEMENT OF FACT**

39
40 The purpose of this bill is to modify the sentencing review
41 procedure in light of certain recent decisions of the Maine
42 Supreme Judicial Court. Decisions such as State v. Lewis, No.____
43 (Me., April 19, 1991), State v. Michaud, No.____ (Me. May 2, 1991),
44 and State v. Clark, No.____ (Me. May 13, 1991), reveal the
45 conflicting sentencing criteria in the Maine Revised Statutes,
46 Title 17-A, section 1151; Title 17-A, section 1252-B; Title 17-A,
47 section 1257, subsection 2; and Title 17-A, section 1323 and
48 other locations within Title 17-A with the appellate review
49 provisions in Title 15, chapter 306-A. The Title 17-A provisions
50 contain a number of criteria to be considered by the sentencing

2 court in every criminal case and a conflict occurs because
3 different criteria are indicated in the Title 15 review process.
4 This bill resolves the apparent conflict that has arisen as a
5 result of the different statutory mandates.

6 This bill specifies that the Supreme Judicial Court, sitting
7 as a reviewing court, is required to consider the same
8 statutorily mandated criteria as the original sentencing court.
9 In addition, the bill specifies that the sentencing court, which
10 has had the opportunity to view the defendant through the course
11 of a trial or other court proceeding and has had the opportunity
12 to view the victim of the defendant's crime, may not have its
13 judgment substituted by an appellate court unless the sentencing
14 court has abused its discretion by failing to adequately consider
15 the statutorily mandated criteria. This bill provides for the
16 remanding of cases for resentencing in those cases when the Law
17 Court finds that an abuse of discretion has occurred.

18 The bill also clarifies that the full range of sentencing
19 must be available to a sentencing court in every case and that,
20 after full and complete consideration of the sentencing criteria,
21 the court is able to impose a sentence within that full range of
22 actual or suspended sentences. This is necessary due to the
23 Supreme Judicial Court's interpretation of the legislative intent
24 in Public Law 1987, chapter 808, in which the maximum sentence
25 for a Class A offense was increased to 40 years. The court
26 interpreted that law to require that a 2-tier system be
27 superimposed by the courts whereby the effective maximum sentence
28 for all but a small minority of offenders would be 20 years.
29 This bill specifies that the full range of sentencing must be
30 available to every sentencing court after due consideration of
31 all required sentencing criteria.

34 This bill provides that, in the case of Class A offenses as
35 well as all other classes of offenses, the sentencing court is
36 free to consider the statutory criteria as these criteria relate
37 to a particular defendant, a particular victim and a particular
38 offense and impose the appropriate sentence to be served or
39 suspended with probation, up to the maximum statutorily provided
40 for.