

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 546

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S.P. 203

In Senate, February 14, 1995

**An Act to Change the Law That Determines When a Sentence in Excess  
of 20 Years May Be Imposed for a Class A Crime.**

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Reported by Senator MILLS of Somerset for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice suggested and ordered printed pursuant to Joint Rule 20.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

2  
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 17-A MRSA §1252, sub-§2, ¶A,** as amended by PL 1987, c.  
808, §§1 and 3, is further amended to read:

6 A. In the case of a Class A crime, the court shall set a  
7 definite period not to exceed 40 years. The court may  
8 consider a serious criminal history of the defendant and  
9 impose a maximum period of incarceration in excess of 20  
10 years based on either the nature and seriousness of the  
11 crime alone or on the nature and seriousness of the crime  
12 coupled with the serious criminal history of the defendant;

14  
15  
16 **STATEMENT OF FACT**

17 This bill amends the Maine Criminal Code to allow  
18 consideration of serious criminal histories when determining  
19 whether sentences of imprisonment for Class A crimes may exceed  
20 20 years. The purpose of this change is to separate the  
21 statutory language from past legislative history that has been  
22 interpreted to prohibit the consideration of a defendant's  
23 serious criminal history in determining whether the sentence for  
24 a Class A crime may exceed 20 years. As used in this bill,  
25 "criminal history" normally refers to criminal convictions, but  
26 it could under less common circumstances include uncharged  
27 criminal conduct or criminal conduct initially charged but  
28 ultimately disposed of as part of a broader plea agreement.

29  
30 In State v. Lewis, 590 A.2d 149, 151 (Me. 1991), the Law  
31 Court construed the Maine Revised Statutes, Title 17-A, section  
32 1252, subsection 2, paragraph A, amended by Public Law 1987,  
33 chapter 808, section 1, effective July 1, 1989, as authorizing a  
34 sentence in the 20-year to 40-year range only in those situations  
35 involving the "most heinous and violent crimes committed against  
36 a person." The commendable purpose behind this interpretation  
37 was to provide some limiting principle for application of the  
38 20-year to 40-year range.

39  
40 Although commendable in purpose, the interpretation has  
41 proven somewhat inflexible in practice when applied to a  
42 recidivist whose underlying criminal conduct is not the most  
43 heinous and violent but is, when coupled with the prior serious  
44 criminal history, sufficiently intolerable to justify extended  
45 separation from society.

46  
47 In State v. Hawkins, 633 A.2d 78, 79 (Me. 1993), the Law  
48 Court held that such recidivism could not serve to elevate a  
49 sentence from the lower to the upper range: "[A] maximum period  
50

2 of incarceration exceeding twenty years can be imposed only if a  
3 period in excess of twenty years can be justified as a basic  
4 period of incarceration. Circumstances of the offender, or other  
5 circumstances unrelated to the nature and seriousness of the  
6 offense, cannot elevate the maximum period of incarceration  
7 beyond twenty years when the crime itself is not within the  
8 extended range of Class A crimes."

10 The terms "basic" and "maximum" refer to the 3-step  
11 sentencing process established by the Law Court in State v.  
12 Hewey, 622 A.2d 1151, 1154-55 (Me. 1993). The 3 separate  
13 determinations that must be made by a sentencing court are: (1)  
14 the basic period of incarceration; (2) the maximum period of  
15 incarceration; and (3) the final sentence. [Id.; see also State  
16 v. Roberts, 641 A.2d 177 (Me. 1994); State v. Bolduc, 638 A.2d  
17 725, 727 (Me. 1994)]. The basic period of incarceration must be  
18 based solely on the nature and seriousness of the offense,  
19 without regard to factors peculiar to the offender such as a  
20 history of prior convictions.

22 The bill overrules State v. Hawkins and its progeny [State  
23 v. Shackelford, 634 A.2d 1292, 1295-96 (Me. 1993)] to the extent  
24 that these cases hold that determination of whether a term of  
25 imprisonment can exceed 20 years is limited solely to a  
26 consideration of the nature and seriousness of the offense (the  
27 basic period of incarceration). The court is now authorized to  
28 consider the serious criminal history of a recidivist defendant  
29 and to impose a maximum period of incarceration in excess of 20  
30 years for a Class A offense that, based solely on the nature and  
31 seriousness of that offense, would not justify a basic period of  
32 incarceration in excess of 20 years. It is anticipated that this  
33 change in the law will apply only to a small number of cases in  
34 which the offender's prior serious criminal history, coupled with  
35 the offense for which the sentence is imposed, demonstrates a  
36 need to separate the offender from society for a more extended  
37 period of time than the offense for which the offender is being  
38 sentenced would otherwise justify.