

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1524

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S.P. 492

In Senate, March 13, 1997

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### An Act to Reinstate the Death Penalty.

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Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BENOIT of Franklin.  
Cosponsored by Representative WATERHOUSE of Bridgton and  
Representatives: KASPRZAK of Newport, LABRECQUE of Gorham, LANE of Enfield,  
PLOWMAN of Hampden, SNOWE-MELLO of Poland.

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

2           **Sec. 1. 10 MRSA §1174, sub-§3, ¶R,** as amended by PL 1995, c.  
4 65, Pt. A, §15 and affected by §153 and Pt. C, §15, is further  
amended to read:

6           R. To cancel, terminate, fail to renew or refuse to  
8 continue any franchise relationship with a licensed new  
motor vehicle dealer, notwithstanding the terms, provisions  
10 or conditions of any agreement or franchise or the terms or  
provisions of any waiver, without first furnishing  
12 notification of the termination to the new motor vehicle  
dealer as follows:

14           (1) Notification under this paragraph shall must be in  
16 writing, shall must be by certified mail or personally  
delivered to the new motor vehicle dealer and shall  
18 must contain:

20           (a) A statement of intention to terminate the  
franchise, cancel the franchise or not to renew  
22 the franchise;

24           (b) A statement of the reasons for the  
termination, cancellation or nonrenewal; and

26           (c) The date on which the termination,  
28 cancellation or nonrenewal takes effect;

30           (2) The notice described in this paragraph shall may  
not be less than 90 days prior to the effective date of  
32 the termination, cancellation or nonrenewal; or

34           (3) The notice described in this paragraph shall may  
not be less than 15 days prior to the effective date of  
36 the termination, cancellation or nonrenewal with  
respect to any of the following:

38           (a) Insolvency of the new motor vehicle dealer,  
40 or filing of any petition by or against the new  
motor vehicle dealer under any bankruptcy or  
42 receivership law;

44           (b) The business operations of the franchised  
motor vehicle dealer have been abandoned or closed  
46 for 7 consecutive business days unless the closing  
is due to an act of God, strike or labor  
48 difficulty;

2 (c) Conviction of or plea of nolo contendere of a  
franchised motor vehicle dealer, or one of its  
4 principal owners, of murder or any Class A, B or C  
crime, as defined in the Maine Criminal Code,  
6 Title 17-A, in which a sentence of imprisonment of  
one year or more is imposed under Title 17-A,  
sections-1251-and-1252 chapter 51, 52 or 52-A; or

8 (d) Revocation of the franchised motor vehicle  
10 dealer's license pursuant to Title 29-A, section  
903;

12 **Sec. 2. 15 MRSA c. 301, sub-c. V is enacted to read:**

14 **SUBCHAPTER V**

16 **EXECUTION OF SENTENCE OF DEATH**

18 **§1851. Transfer to State Prison**

20 When a person is sentenced to death, the judgment of the  
22 court shall direct the sheriff of the county in which the trial  
was held to move the person from the county jail to the State  
24 Prison. Unless otherwise directed by an appropriate court order,  
the person must be kept in the State Prison pending the review of  
26 the sentence by the Supreme Judicial Court.

28 **§1852. Issuance of warrant by Governor**

30 When a person is sentenced to death and the sentence is  
32 reviewed and affirmed by the Supreme Judicial Court, the clerk of  
the trial court shall prepare a certified copy of the record of  
34 the judgment and the sheriff shall transmit the record to the  
Governor. The sentence may not be executed until the Governor  
36 issues a warrant directing the Warden of the State Prison to  
execute the sentence at a specified time, attaches it to the copy  
of the record and transmits it to the warden.

38 **§1853. Stay of execution of death sentence**

40 The execution of a death sentence may be stayed only by the  
42 Governor or incident to an appeal or collateral proceeding.

44 **§1854. Proceedings when person sentenced to death appears**  
46 **to be mentally ill**

48 **1. Examination by psychiatrists.** When the Governor is  
informed that a person under sentence of death may be mentally  
ill, the Governor shall stay execution of the sentence and  
50 appoint a commission of 3 psychiatrists to examine the convicted

2 person. The Governor shall notify the psychiatrists in writing  
3 that they are to examine the convicted person to determine  
4 whether the convicted person understands the nature and effect of  
5 the death penalty and why it is imposed upon the convicted  
6 person. The examination of the convicted person must take place  
7 with all 3 psychiatrists present at the same time. Counsel for  
8 the convicted person and counsel for the State may be present at  
9 the examination. If the convicted person does not have counsel,  
10 the court that imposed the sentence shall appoint counsel to  
11 represent the convicted person.

12 2. Issuance of warrant. After receiving the report of the  
13 commission, if the Governor decides that the convicted person has  
14 the mental capacity to understand the nature of the death penalty  
15 and the reasons it was imposed upon the convicted person, the  
16 Governor shall issue a warrant to the warden directing the warden  
17 to execute the sentence at a time designated in the warrant.

18 3. Committed to mental health institute. If the Governor  
19 decides that the convicted person does not have the mental  
20 capacity to understand the nature of the death penalty and the  
21 reasons it was imposed, the Governor shall have the convicted  
22 person committed to a state mental health institute.

23 4. Determination of sanity. When a person under sentence  
24 of death has been committed to a state mental health institute,  
25 the person must be kept there until the proper official of the  
26 institute determines that the person is restored to sanity. The  
27 institute official shall notify the Governor of the official's  
28 determination and the Governor shall appoint another commission  
29 to proceed as provided in subsection 1.

30 5. Fees for psychiatrists. The Governor shall allow  
31 reasonable fees for psychiatrists appointed under this section.  
32 The State shall pay the fees.

33 **§1855. Proceedings when person sentenced to death appears**  
34 **to be pregnant**

35 1. Examination by physician. When the Governor is informed  
36 that a person under sentence of death may be pregnant, the  
37 Governor shall stay execution of the sentence and appoint a  
38 qualified physician to examine the convicted person and determine  
39 if the convicted person is pregnant.

40 2. Issuance of warrant after report of physician. After  
41 receiving the report of the physician, if the Governor determines  
42 that the convicted person is not pregnant, the Governor shall  
43 issue a warrant to the Warden of the State Prison directing the  
44 Warden to execute the sentence at a time designated in the warrant.

2        warden to execute the sentence at a time designated in the  
3        warrant.

4        **3. Issuance of warrant when convicted person is no longer**  
5        **pregnant.** If the Governor determines that a convicted person  
6        whose execution is stayed because of pregnancy is no longer  
7        pregnant, the Governor shall issue a warrant to the warden  
8        directing the warden to execute the sentence at a time designated  
9        in the warrant.

10       **4. Fee for physician.** The Governor shall allow a  
11       reasonable fee for the physician appointed under this section.  
12       The State shall pay the fee.

13       **§1856. Unjustifiable failure to execute sentence of death**

14       If a death sentence is not executed because of an  
15       unjustified failure of the Governor to issue a warrant or for any  
16       other unjustifiable reason, the Supreme Judicial Court shall,  
17       upon application by the Attorney General, issue a warrant  
18       directing the Warden of the State Prison to execute the sentence  
19       at a time specified in the warrant.

20       **§1857. Execution of death sentence**

21       **1. Execution.** A death sentence must be executed by lethal  
22       injection. The Warden of the State Prison shall designate the  
23       executioner. The warrant authorizing the execution must be read  
24       to the convicted person immediately before execution.

25       **2. Warden or designee.** The Warden of the State Prison or  
26       the warden's designee shall be present at the execution. The  
27       execution must be carried out at the time specified in the  
28       warrant or as soon as possible after the time specified in the  
29       warrant.

30       **3. Witnesses.** Twelve citizens selected by the warden must  
31       witness the execution. The Chief Medical Examiner or the medical  
32       examiner's designee shall be present to certify the death of the  
33       convicted person. Counsel for the convicted person and clergy  
34       requested by the convicted person may be present.  
35       Representatives of the news media may be present under rules  
36       approved by the Commissioner of Corrections. All other persons,  
37       except prison officers and guards, are excluded.

38       **4. Disposal of bodies.** The body of the convicted person  
39       must be disposed of in the same manner as the bodies of inmates  
40       who die of natural causes in the State Prison.

41       **§1858. Return of warrant of execution**

2        After the death sentence is executed, the Warden of the  
3 State Prison shall return to the Governor the warrant and a  
4 signed statement of execution. If the sentence is executed  
5 pursuant to a warrant issued by the Supreme Judicial Court, the  
6 warden shall return the warrant and the statement to the court  
7 and send an attested copy to the Governor. The warden shall file  
8 an attested copy of the warrant and statement with the clerk of  
9 the court that imposed the sentence.

10        **Sec. 3. 15 MRSA §2115, 2nd ¶**, as repealed and replaced by PL  
11 1965, c. 356, §63, is amended to read:

12        In an appeal from a judgment imposing a sentence of  
13 imprisonment for life or a sentence of death, if 3 justices  
14 concur, the judgment shall ~~be~~ is reversed and may be remanded for  
15 a new trial. In all other criminal cases, the judgment shall ~~be~~  
16 is affirmed, unless a majority of the justices sitting and  
17 qualified to act in the case concur in its reversal.

18        **Sec. 4. 15 MRSA §2131-A** is enacted to read:

19        **§2131-A. Review of death sentence**

20        **1. Automatic sentence review.** When a person is sentenced  
21 to death, the Supreme Judicial Court shall review the sentence in  
22 accordance with this section. The sentence review is automatic  
23 and in addition to a consideration of any errors raised on direct  
24 appeal. If a direct appeal is taken, the appeal and the sentence  
25 review are consolidated. For purposes of the sentence review,  
26 the entire record of the proceedings of the trial court is  
27 transmitted to the Supreme Judicial Court.

28        **2. Excessive or disproportionate sentence.** With regard to  
29 the review of the sentence, the court shall determine whether the  
30 sentence is excessive or disproportionate to the sentence imposed  
31 in similar cases, if any, considering both the crime and the  
32 defendant. If the court finds the sentence excessive or  
33 disproportionate to the sentence imposed in similar cases, the  
34 court may, in addition to any of its other powers, set aside the  
35 sentence and remand the case to the trial court for the  
36 imposition of a sentence of life imprisonment.

37        **3. Direct appeal.** The sentence review and the direct  
38 appeal, if any, have priority over other cases and must be heard  
39 in accordance with any rules that the Supreme Judicial Court may  
40 prescribe to implement this section. A sentence of death may not  
41 be executed unless the sentence is reviewed and affirmed in  
42 accordance with this section.

2           **Sec. 5. 17-A MRSA §201, sub-§2**, as repealed and replaced by PL  
1977, c. 510, §38, is amended to read:

4           2. The sentence for murder ~~shall--be~~ is as authorized in  
chapter ~~51~~ 52-A.

6           **Sec. 6. 17-A MRSA §1251**, as repealed and replaced by PL 1983,  
8 c. 673, §3, is repealed.

10           **Sec. 7. 17-A MRSA §1252-B, sub-§2**, as enacted by PL 1995, c.  
12 433, §1, is amended to read:

14           2. For persons who commit crimes on or after October 1,  
1995, section 1253, subsection 8 substantially reduces the  
16 statutory deductions available under subsections 3 and 3-B for  
good time and under subsections 4 and 5 for meritorious good  
18 time. The change is intended to ensure that the term of  
imprisonment imposed closely approximates what will in fact be  
20 served and to abandon administrative awards that have seriously  
imperiled the State's statutory scheme relative to authorized  
22 terms of imprisonment for murder under section ~~1251~~ 1271 and for  
crimes other than murder under section 1252, subsection 2. At  
24 the same time that it reduces these statutory deductions,  
however, the Legislature intends that the parties in requesting  
26 or recommending dispositions and the sentencing courts, who  
ultimately impose sentences, to the extent that they have imposed  
longer terms of imprisonment in an effort to compensate for the  
28 impact of substantial good time and meritorious good time  
deductions, must make, pursuant to this subsection, the necessary  
30 adjustments in their sentencing decisions in view of the  
substantially reduced deductions. Application of section 1253,  
32 subsection 8 to the sentencing process must be reflected in the  
imposition of shorter terms of imprisonment by courts.

34           **Sec. 8. 17-A MRSA c. 52-A** is enacted to read:

36   CHAPTER 52-A

38   SENTENCES FOR MURDER

40           §1271. Authorized sentences

42           A person who is convicted of murder is sentenced to life  
44 imprisonment, unless a proceeding to determine sentence,  
46 conducted in accordance with this chapter, results in findings by  
the court that the person should be sentenced to death, in which  
48 case, the person is sentenced to death.

50           §1272. Proceeding to determine sentence for murder



1           1. When a person is convicted of murder, the court shall  
2 conduct a separate sentencing proceeding to determine whether the  
3 person should be sentenced to death or life imprisonment, as  
4 authorized by section 1271. The proceeding must be conducted by  
5 the trial judge before the trial jury as soon after the  
6 conviction as possible. If one or more members of the trial jury  
7 are unable to participate in the sentencing proceeding, alternate  
8 jurors who were present during the trial but did not participate  
9 in the deliberations and verdict of the trial may be  
10 substituted. If the trial jury was waived or if the defendant  
11 pleaded guilty, the sentencing proceeding must be conducted  
12 before a jury impaneled for that purpose, unless waived by the  
13 defendant.

14  
15           2. In the sentencing proceeding, evidence may be presented  
16 concerning any matter that the court determines relevant to the  
17 sentence and must include matters relating to whether the murder  
18 was especially heinous, atrocious or cruel or whether the murder  
19 caused the death of 2 or more people. Any evidence that the  
20 court determines to have probative value may be received,  
21 regardless of its admissibility under the exclusionary rules of  
22 evidence, provided that the defendant is afforded a fair  
23 opportunity to rebut hearsay statements. This subsection may not  
24 be construed to authorize the introduction of any evidence  
25 secured in violation of the United States Constitution or the  
26 Constitution of Maine. The State, the defendant and the counsel  
27 for the defendant may present argument for or against a sentence  
28 of death.

29  
30           3. After hearing all evidence, the jury shall deliberate  
31 and recommend to the court a sentence of life imprisonment or a  
32 sentence of death. The recommendation of the jury must be based  
33 upon its consideration of the matters relating to whether the  
34 murder was especially heinous, atrocious or cruel or whether the  
35 murder caused the death of 2 or more people.

36  
37           4. The court shall impose a sentence of life imprisonment  
38 if:

39           A. The jury recommends a sentence of life imprisonment; or

40           B. The jury is unable to reach a unanimous recommendation.

41  
42           5. The court may impose either a sentence of life  
43 imprisonment or a sentence of death if:

44           A. The jury recommends a sentence of death; or

45           B. The defendant waived the right to a jury.

46  
47  
48  
49  
50

2 The court may not impose a sentence of death unless it finds that  
3 the murder was especially heinous, atrocious or cruel or caused  
4 the death of 2 or more people. When the court imposes a sentence  
5 of death, the determination of the court must be supported by  
6 specific written findings of fact based upon the records of the  
7 trial and the sentencing proceedings.

8 **§1273. Appeal of prior murder conviction**

10 If a person has been convicted of murder under section 201,  
11 and the offense upon which the conviction was based is finally  
12 invalidated as a result of an appeal or collateral proceeding and  
13 retrial, if any, the person may petition a court of competent  
14 jurisdiction to be resentenced pursuant to section 1271. If the  
15 conviction under section 201 resulted in the imposition of a  
16 sentence of death and the conviction for the prior offense is on  
17 appeal or is the subject of a collateral proceeding, the sentence  
18 of death may not be executed until after the final disposition of  
19 the appeal, collateral proceeding and retrial, if any.

20

22

**SUMMARY**

24

This bill reinstates the death penalty.