

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 308

S.P. 111

In Senate, January 14, 1999

An Act to Implement the Recommendations of the 118th Legislative Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators.

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 MURRAY of Penobscot.
Cosponsored by Representative THOMPSON of Naples and
Senators: LaFOUNTAIN of York, MITCHELL of Penobscot, Representatives: JABAR of
Waterville, MADORE of Augusta, McALEVEY of Waterboro, PIEH of Bremen, POWERS
of Rockport, WHEELER of Bridgewater.

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

2
4 **Sec. 1. 15 MRSA §1004**, as amended by PL 1997, c. 317, Pt. A, §1, is further amended to read:

6 **§1004. Applicability and exclusions**

8 This chapter applies to the setting of bail for a defendant
10 in a criminal proceeding, including the setting of bail for an
12 alleged contemnor in a plenary contempt proceeding involving a
14 punitive sanction under the Maine Rules of Criminal Procedure,
16 Rule 42 or the Maine Rules of Civil Procedure, Rule 66. It does
18 not apply to the setting of bail in extradition proceedings under
20 sections 201 to 229 or post-conviction review proceedings under
22 sections 2121 to 2132 ~~or~~, probation revocation proceedings under
24 Title 17-A, sections 1205 to 1207 or supervised release
revocation proceedings under Title 17-A, section 1233, except to
the extent and under the conditions stated in those sections.
This chapter applies to the setting of bail for an alleged
contemnor in a summary contempt proceeding involving a punitive
sanction under the Maine Rules of Criminal Procedure, Rule 42 or
the Maine Rules of Civil Procedure, Rule 66 and to the setting of
bail relative to a material witness only as specified in sections
1103 and 1104, respectively.

26 **Sec. 2. 17-A MRSA §1201, sub-§1, ¶B**, as repealed and replaced
28 by PL 1975, c. 740, §109, is amended to read:

30 B. The statute which that the person is convicted of
32 violating expressly provides that the fine and imprisonment
34 penalties it authorizes may not be suspended, in which case
the convicted person shall must be sentenced to the
imprisonment and required to pay the fine authorized
therein; or

36 **Sec. 3. 17-A MRSA §1201, sub-§1, ¶C**, as repealed and replaced
38 by PL 1975, c. 740, §109, is repealed.

40 **Sec. 4. 17-A MRSA §1202, sub-§1-A**, as enacted by PL 1997, c.
42 395, Pt. M, §1, is repealed and the following enacted in its
44 place:

44 1-A. Notwithstanding subsection 1:

46 A. The period of probation for a person convicted under
48 chapter 11 or section 854, excluding subsection 1, paragraph
50 A, subparagraph (1), may be extended by up to 4 years for a
Class A crime, by up to 2 years for a Class B or Class C
crime and by up to one year for a Class D or Class E crime
if the court finds that the additional time is needed to
provide sex-offender treatment to the person or to protect

2 the public from the person because, based on one or more of
3 the factors in section 257, the court determines that the
4 person is a high-risk sex offender; and

5 B. The period of probation for a person sentenced as a
6 dangerous sexual offender pursuant to section 1252,
7 subsection 4-B is any term of years.

8
9 **Sec. 5. 17-A MRSA §1203, sub-§1, as amended by PL 1995, c.**
10 **425, §1, is repealed.**

11 **Sec. 6. 17-A MRSA §1203, sub-§1-A is enacted to read:**

12
13 1-A. The court may sentence a person to a term of
14 imprisonment, not to exceed the maximum term authorized for the
15 crime, an initial portion of which must be served and the
16 remainder of which must be suspended. The period of probation
17 commences on the date the person is released from the initial
18 unsuspended portion of the term of imprisonment, unless the court
19 orders it to commence on an earlier date.

20
21 A. If the period of probation commences upon release of the
22 person from the initial unsuspended portion of the term of
23 imprisonment, the court may revoke probation for any
24 criminal conduct committed during that initial period of
25 imprisonment.

26
27 B. The court may revoke probation if, during the initial
28 unsuspended portion of the term of imprisonment, a person
29 sentenced as a dangerous sexual offender, pursuant to
30 section 1252, subsection 4-B, refuses to actively
31 participate in a sex offender treatment program in
32 accordance with the expectations and judgment of the
33 treatment providers, when requested to do so by the
34 Department of Corrections.

35
36 C. As to both the suspended and unsuspended portions of the
37 sentence, the place of imprisonment must be as follows.

38
39 (1) For a Class D or Class E crime the court must
40 specify a county jail as the place of imprisonment.

41
42 (2) For a Class A, Class B or Class C crime the court
43 must:

44
45 (a) Specify a county jail as the place of
46 imprisonment for any portion of the sentence that
47 is 9 months or less; and
48

2 3. During the period of supervised release specified in the
3 sentence made pursuant to subsections 1 and 2, and upon
4 application of a person on supervised release or the person's
5 probation officer, or upon its own motion, the court may, after a
6 hearing upon notice to the probation officer and the person on
7 supervised release, modify the requirements imposed by the court,
8 add further requirements authorized by section 1232, or relieve
9 the person on supervised release of any requirement imposed by
10 the court that, in its opinion, imposes on the person an
11 unreasonable burden.

12 Notwithstanding this subsection, the court may grant, ex parte, a
13 motion brought by the probation officer to add further
14 requirements if the requirements are immediately necessary to
15 protect the safety of an individual or the public and if all
16 reasonable efforts have been made to give written or oral notice
17 to the person on supervised release. Any requirements added
18 pursuant to an ex parte motion do not take effect until written
19 notice of the requirements, along with written notice of the
20 scheduled date, time and place when the court will hold a hearing
21 on the added requirements, is given to the person on supervised
22 release.

24 4. On application of the probation officer, or of the
25 person on supervised release, or on its own motion, and if
26 warranted by the conduct of the person, the court may terminate a
27 period of supervised release and discharge the convicted person
28 at any time earlier than that provided in the sentence made
29 pursuant to subsections 1 and 2. A termination and discharge may
30 not be ordered upon the motion of the person on supervised
31 release unless notice of the motion is given to the probation
32 officer by the person on supervised release. A termination and
33 discharge relieves the person on supervised release of any
34 obligations imposed by the sentence of supervised release.

36 5. Any justice, in order to comply with section 1256,
37 subsection 8, may terminate a period of supervised release that
38 would delay commencement of a consecutive unsuspended term of
39 imprisonment. Any judge may also do so if that judge has
40 jurisdiction over each of the sentences involved.

42 6. The court may revoke a period of supervised release
43 pursuant to section 1233. If the court revokes a period of
44 supervised release, the court may require the person to serve
45 time in prison under the custody of the Department of
46 Corrections. This time in prison may equal all or part of the
47 period of supervised release, without credit for time served on
48 post-release supervision, but may not exceed 1/3 of the straight
49 term of imprisonment imposed.

50

2 **§1232. Conditions of supervised release**

4 If the court imposes a sentence that includes a period of
6 supervised release, it shall set conditions of supervised
8 release. The conditions of release that apply to probation under
10 section 1204 apply to conditions of supervised release. The
12 court may also set conditions of supervised release that it
14 determines to be reasonable and appropriate to manage the
16 person's behavior.

18 **§1233. Revocation procedures**

20 The procedures, rights and responsibilities that apply to
22 probation revocation under sections 1205 to 1208, including bail
24 under section 1205, subsection 8 and appellate review of
26 revocation under section 1207, apply to revocation of supervised
28 release.

30 **Sec. 10. 17-A MRSA §1252, sub-§4-B is enacted to read:**

32 4-B. If the State pleads and proves that the defendant is a
34 dangerous sexual offender, the court, notwithstanding subsection
36 2, may set a definite period of imprisonment for any term of
38 years.

40 A. As used in this section, "dangerous sexual offender"
42 means a person who commits a new gross sexual assault after
44 having been convicted previously and sentenced for any of
46 the following:

48 (1) Gross sexual assault, formerly denominated as
50 gross sexual misconduct;

(2) Rape;

(3) Attempted murder accompanied by sexual assault;

(4) Murder accompanied by sexual assault; or

(5) Conduct substantially similar to a crime listed in
subparagraph (1), (2), (3) or (4) that is a crime under
the laws of the United States or any other state.

The date of sentencing is the date of the oral pronouncement
of the sentence by the trial court, even if an appeal is
taken.

B. "Accompanied by sexual assault" as used with respect to
attempted murder, murder and crimes involving substantially
similar conduct in other jurisdictions is satisfied if the

2 sentencing court at the time of sentence imposition makes
3 such a finding.

4 **Sec. 11. 17-A MRSA §1256, sub-§8**, as enacted by PL 1989, c.
5 739, §2, is amended to read:

6
7 8. No court may impose a sentence of imprisonment, not
8 wholly suspended, to be served consecutively to any split
9 sentence, or to any sentence including supervised release under
10 chapter 50, previously imposed or imposed on the same date, if
11 the net result, even with the options made available by
12 subsections 5 and 9 ~~of this section~~ and section 1202, subsection
13 4, would be to have the person released from physical confinement
14 to be on probation or supervised release for the first sentence
15 and thereafter be required to serve an unsuspended term of
16 imprisonment on the 2nd sentence.

17 **Sec. 12. 17-A MRSA §1263, sub-§1, ¶C**, as enacted by PL 1985,
18 c. 821, §15, is amended to read:

19
20 C. The sentence imposed conforms to the requirements of
21 section 1262 and would, in any case, have been a split
22 sentence under section 1203, subsection 1 1-A, with
23 commitment under both portions of the sentence to the
24 Department of Corrections;

25 SUMMARY

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27
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29
30 This bill comprises the unanimous statutory recommendations
31 of the Joint Select Committee to Implement a Program for the
32 Control, Care and Treatment of Sexually Violent Predators,
33 created by Joint Order, House Paper 1653, 118th Maine
34 Legislature. The complete recommendations and background
35 information are contained in the select committee's final report.

36
37 This bill makes a number of changes to the current
38 punishment provisions in the Maine Criminal Code, Part III in an
39 effort to allow courts to deal more effectively with the
40 dangerous sexual offender. These changes provide for longer
41 terms of imprisonment, longer periods of probation and the
42 imposition of supervised release when a term of imprisonment
43 expires.

44
45 The bill defines what is meant by "dangerous sexual
46 offender." The definition targets those sexual offenders who
47 commit a new gross sexual assault under the Maine Revised
48 Statutes, Title 17-A, section 253 after having been previously
49 convicted and sentenced for a serious sexual assault. Because
50 prior intervention of the criminal justice system has failed to

2 deter the offender and because the offender's own repetitive
3 criminal behavior currently serves as the most accurate indicator
4 of future dangerousness, the new sentencing options are
5 consistent with the "just deserts" philosophy of the Maine
6 Criminal Code and serve primarily to enhance public safety
7 through restraint and post-release management. The bill proposes
8 4 changes respecting punishment for the dangerous sexual offender.

10 First, Title 17-A, section 1252, subsection 4-B, removes the
11 current ceiling for terms of imprisonment for the "dangerous
12 sexual offender." A court is authorized to impose a straight
13 term of imprisonment or a split term of imprisonment of "any
14 term of years."

16 Second, Title 17-A, section 1202, subsection 1-A removes the
17 current probation period caps for the "dangerous sexual
18 offender." A court is authorized to impose a period of probation
19 of "any term of years."

20 Third, Title 17-A, chapter 50 proposes a new post-release
21 mechanism identified as "supervised release." Supervised release
22 is used in conjunction with the imposition of a straight term of
23 imprisonment and is modeled to some degree upon federal law
24 regarding supervised release (see 18 U.S.C. §3583). A term of
25 supervised release of "any term of years" may be imposed by a
26 court at the time of imposing a straight term of imprisonment.
27 Sanctioning for a violation of a supervised release operates as
28 does sanctioning for a violation of probation. As with
29 probation, the sanction imposed upon revocation is intended to
30 sanction the violator for failing to abide by the court-ordered
31 conditions. Even in the context of new criminal conduct, the
32 violator is sanctioned for the breach of trust, leaving the
33 actual punishment for any new underlying criminal conduct to the
34 court ultimately responsible for imposing punishment for that new
35 crime.

36 Fourth, the bill replaces Title 17-A, section 1203,
37 subsection 1 with subsection 1-A to allow the court to revoke
38 probation if, during the initial unsuspended portion of the term
39 of imprisonment, a person sentenced as a "dangerous sexual
40 offender" refuses to actively participate in a sex offender
41 treatment program, in accordance with the expectations and
42 judgment of the treatment providers, when requested to do so by
43 the Department of Corrections. By virtue of new Title 17-A,
44 section 1233, supervised release may be revoked by a court before
45 the completion of the straight term of imprisonment.

48 Finally, the bill also provides for the inclusion of a
49 period of supervised release after imprisonment for any person
50 convicted of a Title 17-A, section 253 offense. Unlike the

2 dangerous sexual offender group, however, the length of the
period authorized depends upon the class of the gross sexual
4 assault for which the person is convicted (up to 10 years for a
Class A section 253 violation and up to 6 years for a Class B or
6 Class C section 253 violation). Additionally, as is true of the
dangerous sexual offender group, the time of additional
8 imprisonment to serve may equal all or part of the period of
supervised release with no credit being given for any time
actually served on supervised release, but may not exceed 1/3 of
10 the straight term of imprisonment imposed.