

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2214

H.P. 1558

House of Representatives, April 22, 1999

An Act to Reinstate the Death Penalty.

Received by the Clerk of the House on April 21, 1999. Referred to the Committee on Criminal Justice pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative PLOWMAN of Hampden.
Cosponsored by Senator CAREY of Kennebec and
Representatives: ANDREWS of York, KASPRZAK of Newport, MacDOUGALL of North
Berwick, MACK of Standish, SNOWE-MELLO of Poland, WATERHOUSE of Bridgton.

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

2

3 **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
5 amended to read:

6

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

14

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

19

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

23

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

26

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

29

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

33

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

38

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

43

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

49

50 (c) Conviction of or plea of nolo contendere of a

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

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

12 **Sec. 2. 10 MRSA §1243, sub-§3, ¶Q,** as enacted by PL 1997, c.
14 473, §3, is amended to read:

16 Q. To cancel, terminate, fail to renew or refuse to continue
any franchise relationship with a licensed new personal
18 sports mobile dealer, notwithstanding the terms, provisions
or conditions of any agreement or franchise or the terms or
20 provisions of any waiver, without first providing
notification of the termination, cancellation, nonrenewal or
22 noncontinuance to the new personal sports mobile dealer as
follows:

24 (1) Notification under this paragraph must be in
writing and must be delivered personally or by
26 certified mail to the new personal sports mobile dealer
and must contain:

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

30 (b) A statement of the reasons for the
32 termination, cancellation, noncontinuance or
34 nonrenewal; and

36 (c) The date on which the termination,
38 cancellation, noncontinuance or nonrenewal takes
effect;

40 (2) The notice required in this paragraph may not be
42 given less than 90 days prior to the effective date of
the termination, cancellation, noncontinuance or
44 nonrenewal, except as provided in subparagraph (3); or

46 (3) The notice required in this paragraph may not be
48 given less than 15 days prior to the effective date of
the termination, cancellation, noncontinuance or
nonrenewal with respect to any of the following:

2 (a) Insolvency of the new personal sports mobile
4 dealer or filing of any petition by or against the
6 new personal sports mobile dealer under any
bankruptcy or receivership law;

8 (b) The business operations of the personal sports
10 mobile dealer have been abandoned or closed for 14
12 consecutive business days unless the closing is
due to an act of God, strike or labor difficulty;
or

14 (c) Conviction of or plea of nolo contendere of a
16 personal sports mobile dealer or one of its
principal owners of any Class A, Class B or Class
18 C crime, as defined in Title 17-A, in which a
sentence of imprisonment of one year or more or a
death sentence is imposed under Title 17-A,
sections 1251-and 1252 and 1271; or

20 **Sec. 3. 10 MRSA §1434, sub-§3, ¶Q**, as enacted by PL 1997, c.
22 427, §2, is amended to read:

24 Q. To cancel, terminate, fail to renew or refuse to continue
26 any dealership relationship with a licensed new recreational
vehicle dealer, notwithstanding the terms, provisions or
28 conditions of any agreement or dealer agreement or the terms
or provisions of any waiver, without first providing
30 notification of the termination, cancellation, nonrenewal or
noncontinuance to the new recreational vehicle dealer as
follows:

32 (1) Notification must be in writing and delivered
34 personally or by certified mail to the new recreational
vehicle dealer and contain:

36 (a) A statement of intent to terminate the dealer
38 agreement, cancel the dealer agreement, not
continue the dealer agreement or not to renew the
40 dealer agreement;

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

46 (c) The date on which the termination,
48 cancellation, noncontinuance or nonrenewal takes
effect;

50 (2) Notification may not be less than 90 days prior to

2 the effective date of the termination, cancellation,
noncontinuance or nonrenewal; or

4 (3) Notification may not be less than 15 days prior to
6 the effective date of the termination, cancellation,
noncontinuance or nonrenewal with respect to any of the
8 following:

10 (a) Insolvency of the new recreational vehicle
12 dealer or filing of any petition by or against the
new recreational vehicle dealer under any
bankruptcy or receivership law;

14 (b) The business operations outlined by the dealer
16 agreement have been abandoned or closed for 14
consecutive business days unless the closing is
18 due to an act of God, a strike or labor difficulty;

20 (c) Conviction of or plea of nolo contendere of a
22 recreational vehicle dealer or one of its
principal owners of any Class A, Class B or Class
24 C crime, as defined in Title 17-A, in which a
sentence of imprisonment of 60 days or more or a
death sentence is imposed under Title 17-A,
26 sections 1251 and 1252 and 1271;

28 (d) Revocation of the recreational vehicle
dealer's license pursuant to Title 29-A, section
30 903; or

32 (e) A determination that there was a material
34 fraudulent misrepresentation by the dealer to the
manufacturer, distributor or wholesaler; or

36 **Sec. 4. 15 MRSA c. 301, sub-c. V is enacted to read:**

38 **SUBCHAPTER V**

40 **EXECUTION OF SENTENCE OF DEATH**

42 **§1851. Transfer to Maine State Prison**

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

2 **§1852. Issuance of warrant by Governor**

4 When a person is sentenced to death and the sentence is
6 reviewed and affirmed by the Supreme Judicial Court, the clerk of
8 the trial court shall prepare a certified copy of the record of
10 the judgment and the sheriff shall transmit the record to the
12 Governor. The sentence may not be executed until the Governor
14 issues a warrant directing the Warden of the Maine State Prison
16 to execute the sentence at a specified time, attaches it to the
18 copy of the record and transmits it to the warden.

14 **§1853. Stay of execution of death sentence**

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

18 **§1854. Proceedings when person sentenced to death appears**
20 **to be mentally ill**

22 1. Examination by psychiatrists. When the Governor is
24 informed that a person under sentence of death may be mentally
26 ill, the Governor shall stay execution of the sentence and
28 appoint a commission of 3 psychiatrists to examine the convicted
30 person. The Governor shall notify the psychiatrists in writing
32 that they are to examine the convicted person to determine
34 whether the convicted person understands the nature and effect of
36 the death penalty and why it is imposed upon the convicted
38 person. The examination of the convicted person must take place
40 with all 3 psychiatrists present at the same time. Counsel for
42 the convicted person and counsel for the State may be present at
44 the examination. If the convicted person does not have counsel,
46 the court that imposed the sentence shall appoint counsel to
48 represent the convicted person.

36 2. Issuance of warrant. After receiving the report of the
38 commission, if the Governor decides that the convicted person has
40 the mental capacity to understand the nature of the death penalty
42 and the reasons it was imposed upon the convicted person, the
44 Governor shall issue a warrant to the Warden of the Maine State
46 Prison directing the warden to execute the sentence at a time
48 designated in the warrant.

44 3. Committed to mental health institute. If the Governor
46 decides that the convicted person does not have the mental
48 capacity to understand the nature of the death penalty and the
50 reasons it was imposed, the Governor shall have the convicted
52 person committed to a state mental health institute.

50 4. Determination of sanity. When a person under sentence

2 of death has been committed to a state mental health institute,
3 the person must be kept there until the proper official of the
4 institute determines that the person is restored to sanity. The
5 institute official shall notify the Governor of the official's
6 determination and the Governor shall appoint another commission
7 to proceed as provided in subsection 1.

8 5. Fees for psychiatrists. The Governor shall allow
9 reasonable fees for psychiatrists appointed under this section.
10 The State shall pay the fees.

12 **§1855. Proceedings when person sentenced to death appears**
13 **to be pregnant**

14
15 1. Examination by physician. When the Governor is informed
16 that a person under sentence of death may be pregnant, the
17 Governor shall stay execution of the sentence and appoint a
18 qualified physician to examine the convicted person and determine
19 if the convicted person is pregnant.

20
21 2. Issuance of warrant after report of physician. After
22 receiving the report of the physician, if the Governor determines
23 that the convicted person is not pregnant, the Governor shall
24 issue a warrant to the Warden of the Maine State Prison directing
25 the warden to execute the sentence at a time designated in the
26 warrant.

27
28 3. Issuance of warrant when convicted person is no longer
29 pregnant. If the Governor determines that a convicted person
30 whose execution is stayed because of pregnancy is no longer
31 pregnant, the Governor shall issue a warrant to the Warden of the
32 Maine State Prison directing the warden to execute the sentence
33 at a time designated in the warrant.

34
35 4. Fee for physician. The Governor shall allow a
36 reasonable fee for the physician appointed under this section.
37 The State shall pay the fee.

38 **§1856. Unjustifiable failure to execute sentence of death**

39
40 If a death sentence is not executed because of an
41 unjustified failure of the Governor to issue a warrant or for any
42 other unjustifiable reason, the Supreme Judicial Court, upon
43 application by the Attorney General, shall issue a warrant
44 directing the Warden of the Maine State Prison to execute the
45 sentence at a time specified in the warrant.

46
47 **§1857. Execution of death sentence**

48
49 1. Execution. A death sentence must be executed by lethal
50

2 injection. The Warden of the Maine State Prison shall designate
3 the executioner. The warrant authorizing the execution must be
4 read to the convicted person immediately before execution.

6 2. Warden or designee. The Warden of the Maine State
7 Prison or the warden's designee must be present at the
8 execution. The execution must be carried out at the time
9 specified in the warrant or as soon as possible after the time
10 specified in the warrant.

12 3. Witnesses. Twelve citizens selected by the Warden of
13 the Maine State Prison must witness the execution. The Chief
14 Medical Examiner or the medical examiner's designee must be
15 present to certify the death of the convicted person. Counsel
16 for the convicted person and clergy requested by the convicted
17 person may be present. Representatives of the news media may be
18 present under rules approved by the Commissioner of Corrections.
19 All other persons, except prison officers and guards, are
20 excluded. Rules adopted pursuant to this subsection are routine
21 technical rules pursuant to Title 5, chapter 375, subchapter II-A.

22 4. Disposal of bodies. The body of the executed person
23 must be disposed of in the same manner as the bodies of inmates
24 who die of natural causes in the Maine State Prison.

26 §1858. Return of warrant of execution

28 After the death sentence is executed, the Warden of the
29 Maine State Prison shall return to the Governor the warrant and a
30 signed statement of execution. If the sentence is executed
31 pursuant to a warrant issued by the Supreme Judicial Court, the
32 warden shall return the warrant and the statement to the court
33 and send an attested copy to the Governor. The warden shall file
34 an attested copy of the warrant and statement with the clerk of
35 the court that imposed the sentence.

36 **Sec. 5. 15 MRSA §2115, 2nd ¶**, as repealed and replaced by PL
38 1965, c. 356, §63, is amended to read:

40 In an appeal from a judgment imposing a sentence of
41 imprisonment for life or a sentence of death, if 3 justices
42 concur, the judgment ~~shall be~~ is reversed and may be remanded for
43 a new trial. In all other criminal cases, the judgment ~~shall be~~
44 is affirmed, unless a majority of the justices sitting and
45 qualified to act in the case concur in its reversal.

46 **Sec. 6. 15 MRSA §2131-A** is enacted to read:

48 §2131-A. Review of death sentence

2 1. Automatic sentence review. When a person is sentenced
to death, the Supreme Judicial Court shall review the sentence in
4 accordance with this section. The sentence review is automatic
and in addition to a consideration of any errors raised on direct
6 appeal. If a direct appeal is taken, the appeal and the sentence
review are consolidated. For purposes of the sentence review,
8 the entire record of the proceedings of the trial court is
transmitted to the Supreme Judicial Court.

10 2. Excessive or disproportionate sentence. With regard to
the review of the sentence, the Supreme Judicial Court shall
12 determine whether the sentence is excessive or disproportionate
to the sentence imposed in similar cases, if any, considering
14 both the crime and the defendant. If the Supreme Judicial Court
finds the sentence excessive or disproportionate to the sentence
16 imposed in similar cases, the court may, in addition to any of
its other powers, set aside the sentence and remand the case to
18 the trial court for the imposition of a sentence of life
imprisonment.

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

26 Sec. 7. 17-A MRS §201, sub-§2, as repealed and replaced by PL
28 1977, c. 510, §38, is amended to read:

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

32 Sec. 8. 17-A MRS §1251, as repealed and replaced by PL 1983,
34 c. 673, §3, is repealed.

36 Sec. 9. 17-A MRS §1252-B, sub-§2, as enacted by PL 1995, c.
38 433, §1, is amended to read:

40 2. For persons who commit crimes on or after October 1,
42 1995, section 1253, subsection 8 substantially reduces the
statutory deductions available under subsections 3 and 3-B for
44 good time and under subsections 4 and 5 for meritorious good
time. The change is intended to ensure that the term of
46 imprisonment imposed closely approximates what will in fact be
served and to abandon administrative awards that have seriously
48 imperiled the State's statutory scheme relative to authorized
terms of imprisonment for murder under section ~~1251~~ 1271 and for
50 crimes other than murder under section 1252, subsection 2. At

2 the same time that it reduces these statutory deductions,
4 however, the Legislature intends that the parties in requesting
6 or recommending dispositions and the sentencing courts, who
8 ultimately impose sentences, to the extent that they have imposed
10 longer terms of imprisonment in an effort to compensate for the
12 impact of substantial good time and meritorious good time
14 deductions, must make, pursuant to this subsection, the necessary
16 adjustments in their sentencing decisions in view of the
18 substantially reduced deductions. Application of section 1253,
20 subsection 8 to the sentencing process must be reflected in the
22 imposition of shorter terms of imprisonment by courts.

24 **Sec. 10. 17-A MRSA c. 52-A is enacted to read:**

26 **CHAPTER 52-A**

28 **SENTENCES FOR MURDER**

30 **§1271. Authorized sentences**

32 A person who is convicted of murder is sentenced to life
34 imprisonment, unless a proceeding to determine sentence,
36 conducted in accordance with this chapter, results in findings by
38 the court that the person should be sentenced to death, in which
40 case, the person is sentenced to death.

42 **§1272. Proceeding to determine sentence for murder**

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

2. In the sentencing proceeding, evidence may be presented
concerning any matter that the court determines relevant to the
sentence and must include matters relating to whether the murder
was especially heinous, atrocious or cruel and whether the murder
caused the death of 2 or more persons. Any evidence that the
court determines to have probative value may be received,
regardless of its admissibility under the exclusionary rules of
evidence, as long as the defendant is afforded a fair opportunity

2 to rebut hearsay statements. This subsection may not be
3 construed to authorize the introduction of any evidence secured
4 in violation of the United States Constitution or the
5 Constitution of Maine. The State, the defendant and the counsel
6 for the defendant may present argument for or against a sentence
7 of death.

8 3. After hearing all evidence, the jury shall deliberate
9 and recommend to the court a sentence of life imprisonment or a
10 sentence of death. The recommendation of the jury must be based
11 upon its consideration of the matters relating to whether the
12 murder:

13 A. Was especially heinous, atrocious or cruel;

14 B. Caused the death of 2 or more persons;

15 C. Caused the death of a child under 16 years of age;

16 D. Caused the death of a police officer or corrections
17 officer; or

18 E. Caused the death of an elected public official.

19 4. The court shall impose a sentence of life imprisonment
20 if:

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

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

23 5. The court may impose either a sentence of life
24 imprisonment or a sentence of death if:

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

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

27 The court may not impose a sentence of death unless it finds that
28 the murder was especially heinous, atrocious or cruel or caused
29 the death of 2 or more persons. When the court imposes a
30 sentence of death, the determination of the court must be
31 supported by specific written findings of fact based upon the
32 records of the trial and the sentencing proceedings.

33 **§1273. Appeal of prior murder conviction**

34 If a person has been convicted of murder under section 201,
35 and the offense upon which the conviction was based is finally
36 invalidated as a result of an appeal or collateral proceeding and
37

2 retrial, if any, the person may petition a court of competent
3 jurisdiction to be resentenced pursuant to section 1271. If the
4 subsequent conviction under section 201 resulted in the
5 imposition of a sentence of death and the conviction for the
6 prior offense is on appeal or is the subject of a collateral
7 proceeding, the sentence of death may not be executed until after
8 the final disposition of the appeal, collateral proceeding and
9 retrial, if any.

10 **Sec. 11. Statutory referendum procedure; submission at statewide**
11 **election; form of question; effective date.** This Act must be submitted
12 to the legal voters of the State of Maine at a statewide election
13 held on the Tuesday following the first Monday of November
14 following passage of this Act. The municipal officers of this
15 State shall notify the inhabitants of their respective cities,
16 towns and plantations to meet, in the manner prescribed by law
17 for holding a statewide election, to vote on the acceptance or
18 rejection of this Act by voting on the following question:

19 "Do you favor reinstating the death penalty?"

20
21 The legal voters of each city, town and plantation shall
22 vote by ballot on this question, and designate their choice by a
23 cross or check mark placed within a corresponding square below
24 the word "Yes" or "No." The ballots must be received, sorted,
25 counted and declared in open ward, town and plantation meetings
26 and returns made to the Secretary of State in the same manner as
27 votes for members of the Legislature. The Governor shall review
28 the returns and, if it appears that a majority of the legal votes
29 are cast in favor of the Act, the Governor shall proclaim that
30 fact without delay, and the Act takes effect 30 days after the
31 date of the proclamation.

32
33 The Secretary of State shall prepare and furnish to each
34 city, town and plantation all ballots, returns and copies of this
35 Act necessary to carry out the purpose of this referendum.

36 37 38 **SUMMARY**

39
40 This bill reinstates the death penalty subject to a
41 referendum on whether the people of the State want to reinstate
42 the death penalty.