

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 856

H.P. 633

House of Representatives, February 20, 2003

An Act To Change Mandatory Minimum Sentences in Certain Cases

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLS of Cornville.
Cosponsored by Representatives: GERZOFSKY of Brunswick, MILLS of Farmington,
NORBERT of Portland, Senator: DAVIS of Piscataquis.

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

4 **Sec. 1. 17-A MRSA §1251**, as amended by PL 1999, c. 536, §1,
is further amended to read:

6 **§1251. Imprisonment for murder**

8 A person convicted of the crime of murder shall ~~shall~~ must be
10 sentenced to imprisonment for life or for any term of years that
is not less than ~~25~~ 20. The sentence of the court shall ~~shall~~ must
12 specify the length of the sentence to be served and shall commit
the person to the Department of Corrections.

14 In setting the length of imprisonment, if the victim is a
16 child who had not in fact attained the age of 6 years at the time
the crime was committed, a court shall assign special weight to
18 this objective fact in determining the basic sentence in the
first step of the sentencing process. The court shall assign
special weight to any subjective victim impact in determining the
20 final sentence in the 2nd and final step in the sentencing
process. Nothing in this paragraph may be construed to restrict
22 a court in setting the length of imprisonment from considering
the age of the victim in other circumstances when relevant.

24 **Sec. 2. 17-A MRSA §1252, sub-§5-A**, as amended by PL 2001, c.
26 383, §151 and affected by §156, is repealed.

28 **Sec. 3. 17-A MRSA §1252, sub-§9** is enacted to read:

30 9. Whenever a mandatory minimum fine or period of
32 imprisonment is required by law, the mandatory minimum sentence
may be suspended if imposition of the mandatory minimum sentence
34 would create substantial injustice and if the deviation from the
mandatory minimum sentence neither diminishes the gravity of the
36 offense nor adversely affects the safety of the public and would
not frustrate the general purposes of sentencing set forth in
38 section 1151. In deviating from the mandatory minimum sentence,
the presiding justice shall consider all relevant factors,
including:

40 A. The nature of the criminal act;

42 B. The recommendations of the victim or the victim's family
44 and the prosecuting attorney;

46 C. The defendant's prospects for rehabilitation, credible
48 demonstration of remorse and a comprehension of the
consequences of the defendant's actions; and

2 D. The age, background and physical and mental condition of
3 the defendant, the defendant's family circumstances and
4 whether the criminal act was an isolated aberration in the
5 life of the defendant.

6 **Sec. 4. 29-A MRSA §2411, sub-§5**, as amended by PL 2001, c.
7 511, §3, is further amended to read:

8 **5. Penalties.** The following minimum penalties apply and
9 ~~may not be suspended~~:

10 **A.** For a person having no previous OUI offenses within a
11 10-year period:

12 (1) ~~A fine of not less than \$400, except that if the~~
13 ~~person failed to submit to a test, a fine of not less~~
14 ~~than \$500 up to the maximum allowed under Title 17-A,~~
15 section 1301, subsection 1-A, paragraph D;

16 (2) A court-ordered suspension of a driver's license
17 for a period of 90 days, which may not be suspended; and

18 (3) A period of incarceration, which may not be
19 suspended, as follows:

20 (a) Not less than 48 hours when the person:

21 (i) Was tested as having a blood-alcohol
22 level of 0.15% or more;

23 (ii) Was exceeding the speed limit by 30
24 miles per hour or more;

25 (iii) Eluded or attempted to elude an
26 officer; or

27 (iv) Was operating with a passenger under 21
28 years of age; and

29 (b) Not less than 96 hours when the person failed
30 to submit to a test at the request of a law
31 enforcement officer;

32 **B.** For a person having one previous OUI offense within a
33 10-year period:

34 (1) ~~A fine of not less than \$600, except that if the~~
35 ~~person failed to submit to a test at the request of a~~
36 ~~law enforcement officer, a fine of not less than \$800~~

2 up to the maximum amount allowed under section 1301,
3 subsection 1-A, paragraph D;

4 (2) A period of incarceration, which may not be
5 suspended, of not less than 7 days, except that if the
6 person failed to submit to a test at the request of a
7 law enforcement officer, a period of incarceration of
8 not less than 12 days;

10 (3) A court-ordered suspension, which may not be
11 suspended, of a driver's license for a period of 18
12 months; and

14 (4) In accordance with section 2416, a court-ordered
15 suspension, which may not be suspended, of the person's
16 right to register a motor vehicle;

18 C. For a person having 2 previous OUI offenses within a
19 10-year period, which is a Class C crime:

20 (1) ~~A fine of not less than \$1,000, except that if the~~
21 ~~person failed to submit to a test at the request of a~~
22 ~~law enforcement officer, a fine of not less than \$1,300~~
23 up to the maximum allowed under Title 17-A, section
24 1301, subsection 1-A, paragraph C;

26 (2) A period of incarceration, which may not be
27 suspended, of not less than 30 days, except that if the
28 person failed to submit to a test at the request of a
29 law enforcement officer, a period of incarceration of
30 not less than 40 days;

32 (3) A court-ordered suspension, which may not be
33 suspended, of a driver's license for a period of 4
34 years; and

36 (4) In accordance with section 2416, a court-ordered
37 suspension, which may not be suspended, of the person's
38 right to register a motor vehicle;

40 D. For a person having 3 or more previous OUI offenses
41 within a 10-year period, which is a Class G B crime:

44 (1) ~~A fine of not less than \$2,000, except that if the~~
45 ~~person failed to submit to a test at the request of a~~
46 ~~law enforcement officer, a fine of not less than \$2,400~~
47 up to the maximum allowed under Title 17-A, section
48 1301, subsection 1-A, paragraph B;

2 (2) A period of incarceration, which may not be
3 suspended, of not less than 6 months, except that if
4 the person failed to submit to a test at the request of
5 a law enforcement officer, a period of incarceration of
6 not less than 6 months and 20 days;

7 (3) A court-ordered suspension ~~of a driver's license~~
8 ~~for a period of~~ or revocation of a driver's license
9 pursuant to this subparagraph. The court may
10 permanently revoke the driver's license of a person
11 convicted under this paragraph, but if the court does
12 not permanently revoke the driver's license, it must
13 impose a minimum suspension, which may not be
14 suspended, of the driver's license for a period of not
15 less than 6 years; and

16 (4) In accordance with section 2416, a court-ordered
17 suspension, which may not be suspended, of the person's
18 right to register a motor vehicle;

19 E. If a law enforcement officer failed to provide the
20 warnings required by section 2521, subsection 3, the
21 increase in minimum penalties required because of a refusal
22 to submit to a test is not mandatory;

23 F. For a person sentenced under paragraph B, C or D, the
24 court shall order the defendant to participate in the
25 alcohol and other drug program of the Department of
26 Behavioral and Developmental Services, Office of Substance
27 Abuse. The court may waive the program pursuant to Title 5,
28 section 20073-B, if the court finds that the defendant has
29 completed an alcohol or other drug treatment program
30 subsequent to the date of the offense; and

31 G. The court shall order an additional period of license
32 suspension of 275 days for a person sentenced under
33 paragraph A, B, C or D if the person was operating the motor
34 vehicle at the time of the offense with a passenger under 21
35 years of age.

36 **Sec. 5. 29-A MRSA §2411, sub-§6.** as amended by PL 2001, c.
37 332, §1, is further amended to read:

38 **6. Aggravated punishment category.** An operator commits a
39 Class C offense if the State pleads and proves that the operator,
40 while operating a motor vehicle in violation of this section:

41 A. In fact caused serious bodily injury as defined in Title
42 17-A, section 2, subsection 23 to another person or in fact
43 caused the death of another person; or

2 B. Has either a prior conviction for a Class B or C crime
4 under this section or a prior criminal homicide conviction
6 involving or resulting from the operation of a motor vehicle
 while under the influence of intoxicating liquor or drugs or
 with a blood-alcohol content of 0.08% or greater.

8 In any prosecution under this subsection, the State need not
10 prove that the defendant's condition of being under the influence
12 of intoxicants or having a blood-alcohol level of 0.08% or more
14 caused the serious bodily injury or death alleged. The State
 must prove only that the defendant's operation caused the serious
 bodily injury or death. The court shall apply the definition of
 causation in Title 17-A, section 33.

16 The sentence must include a period of incarceration of not less
18 than 6 months, a fine ~~of not less than \$2,000 up to the maximum~~
20 allowed under Title 17-A, section 1301, subsection 1-A, paragraph
22 C and a court-ordered suspension of a driver's license for a
 period of 6 years. ~~These penalties may not~~ Neither the period of
 incarceration nor the court-ordered license suspension may be
 suspended.

24
26

SUMMARY

28 This bill affects sentences in criminal cases in the
 following ways.

30 1. It decreases the minimum sentence of imprisonment for
32 murder to 20 years.

34 2. It grants the sentencing court the authority to deviate
36 from a mandatory minimum sentence and mandatory minimum fine in
38 those circumstances when the court determines that the mandatory
40 fine or sentence would create a substantial injustice and the
 deviation would not diminish the gravity of the offense or
 adversely affect the public safety. Specific factors must be
 considered by the court before deviating from the mandatory
 minimum.

42 3. It removes the cap on fines for operating under the
44 influence and instead allows the court to impose the maximum fine
46 allowed for that specific class of crime. Currently, the maximum
48 penalty that may be imposed for a Class D crime is \$2,000; for a
 Class C crime, the maximum is \$5,000; and for a Class B crime,
 the maximum is \$20,000.

50 4. It changes the class of crime for a 3rd OUI conviction
 in less than 10 years from a Class D to a Class C crime. It also

2 changes the class of crime for 4 or more OUI convictions in a 10-year period from a Class C crime to a Class B crime.