

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 893

S.P. 301

In Senate, February 22, 2005

An Act To Change Mandatory Minimum Sentences in Certain Cases

Reference to the Committee on Criminal Justice and Public Safety 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 MILLS of Somerset.

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~~ 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~~ 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
20 special weight to any subjective victim impact in determining the
final sentence in the 2nd and final step in the sentencing
22 process. Nothing in this paragraph may be construed to restrict
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 2003, c.
26 232, §1, is repealed.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
section 1151.

38 To deviate from the mandatory minimum sentence, the court shall
40 consider all relevant factors, including:

42 A. The nature of the criminal act;

44 B. Any recommendations of the victim, the victim's family
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

50

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 a singular aberration in the
5 life of the defendant.

6 **Sec. 4. 29-A MRSA §2411, sub-§5**, as amended by PL 2003, c.
7 673, Pt. TT, §4 and c. 689, Pt. B, §6, is further amended to read:

8
9 **5. Penalties.** Except as otherwise provided, violation of
10 this section is a Class D crime, which is a strict liability
11 crime as defined in Title 17-A, section 34, subsection 4-A. The
12 following ~~minimum~~ penalties apply ~~and may not be suspended~~:

13 A. For a person having no previous OUI offenses within a
14 10-year period:

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16 (1) ~~A fine of not less than \$500, except that if the~~
17 ~~person failed to submit to a test, a fine of not less~~
18 ~~than \$600 up to the maximum allowed under Title 17-A,~~
19 ~~section 1301, subsection 1-A, paragraph D;~~

20
21 (2) A court-ordered suspension of a driver's license
22 for a period of 90 days, which may not be suspended; and

23
24 (3) A period of incarceration, which may not be
25 suspended, as follows:

26
27 (a) Not less than 48 hours when the person:

28
29 (i) Was tested as having a blood-alcohol
30 level of 0.15% or more;

31
32 (ii) Was exceeding the speed limit by 30
33 miles per hour or more;

34
35 (iii) Eluded or attempted to elude an
36 officer; or

37
38 (iv) Was operating with a passenger under 21
39 years of age; and

40
41 (b) Not less than 96 hours when the person failed
42 to submit to a test at the request of a law
43 enforcement officer;

44
45 B. For a person having one previous OUI offense within a
46 10-year period:

47
48 (1) ~~A fine of not less than \$700, except that if the~~
49 ~~person failed to submit to a test at the request of a~~
50

2 ~~law enforcement officer, a fine of not less than \$900~~
3 up to the maximum amount allowed under section 1301,
4 subsection 1-A, paragraph D;

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

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

20 C. For a person having 2 previous OUI offenses within a
21 10-year period, which is a Class C crime:

22 (1) ~~A fine of not less than \$1,100, except that if the~~
23 ~~person failed to submit to a test at the request of a~~
24 ~~law enforcement officer, a fine of not less than \$1,400~~
25 up to the maximum allowed under Title 17-A, section
26 1301, subsection 1-A, paragraph C;

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

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

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

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

44 (1) ~~A fine of not less than \$2,100, 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 \$2,500~~
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 sentenced 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 D-1. A violation of subsection 1-A, paragraph D is a Class
20 C crime, which is a strict liability crime as defined in
21 Title 17-A, section 34, subsection 4-A. The sentence must
22 include a period of incarceration of not less than 6 months,
23 a fine of not less than \$2,100 up to the maximum allowed
24 under Title 17-A, section 1301, subsection 1-A, paragraph C
25 and a court-ordered suspension, which may not be suspended,
26 of a driver's license for a period of 6 years. These
27 penalties may not be suspended;

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

32 F. For a person sentenced under paragraph B, C or D, the
33 court shall order the defendant to participate in the
34 alcohol and other drug program of the Department of Health
35 and Human Services, Office of Substance Abuse. The court
36 may waive the program pursuant to Title 5, section 20073-B,
37 if the court finds that the defendant has completed an
38 alcohol or other drug treatment program subsequent to the
39 date of the offense; and

40 G. The court shall order an additional period of license
41 suspension of 275 days for a person sentenced under
42 paragraph A, B, C, D or D-1 if the person was operating the
43 motor vehicle at the time of the offense with a passenger
44 under 21 years of age.

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SUMMARY

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

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

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

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3. It removes the cap on fines for operating under the influence and instead allows the court to impose the maximum fine allowed for that specific class of crime. Currently, the maximum 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.

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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 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 and allows the court to permanently revoke the driver's license of a person convicted of 4 or more OUI violations in a 10-year period.