

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1501

S.P. 519

In Senate, March 28, 2005

**An Act To Prevent Domestic Abuse by Reinstating the Death
Penalty for Persons Who Murder Family or Household Members**

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 COURTNEY of York.

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

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

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

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

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

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

32 (a) Insolvency of the new motor vehicle dealer,
33 or filing of any petition by or against the new
34 motor vehicle dealer under any bankruptcy or
35 receivership law;

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

2 (c) Conviction of or plea of nolo contendere of a
4 franchised motor vehicle dealer, or one of its
6 principal owners, of murder or any Class A, B or C
8 crime, as defined in the Maine Criminal Code,
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~~ chapter
51, 52 or 52-A; or

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

14 **Sec. 2. 10 MRSA §1243, sub-§3, ¶Q**, as enacted by PL 1997, c.
16 473, §3, is amended to read:

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

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

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

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

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

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

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

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

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

(c) Conviction of or plea of nolo contendere of a personal sports mobile dealer or one of its principal owners of murder or any Class A, Class B or Class 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~~ chapter 51, 52 or 52-A; or

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

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

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

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

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

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

2 (2) Notification may not be less than 90 days prior to
the effective date of the termination, cancellation,
noncontinuance or nonrenewal; or

4
6 (3) Notification may not be less than 15 days prior to
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
dealer or filing of any petition by or against the
12 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
recreational vehicle dealer or one of its
22 principal owners of murder or any Class A, Class B
or Class C crime, as defined in Title 17-A, in
24 which a sentence of imprisonment of 60 days or
more or a death sentence is imposed under Title
26 17-A, ~~sections--1251--and--1252~~ chapter 51, 52 or
52-A;

28 (d) Revocation of the recreational vehicle
30 dealer's license pursuant to Title 29-A, section
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. 5 is enacted to read:**

38 **SUBCHAPTER 5**

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
46 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
48 State Prison. Unless otherwise directed by an appropriate court
order, the person must be kept in the Maine State Prison pending
50 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.

20 **§1853. Stay of execution of death sentence**

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

26 **§1854. Proceedings when person sentenced to death appears**
28 **to be mentally ill**

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

2. Issuance of warrant. After receiving the report of the
 commission under subsection 1, if the Governor decides that the
 convicted person has the mental capacity to understand the nature
 of the death penalty and the reasons it was imposed upon the
 convicted person, the Governor shall issue a warrant to the
 warden of the Maine State Prison directing the warden to execute
 the sentence at a time designated in the warrant.

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

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

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

14 **§1855. Proceedings when person sentenced to death appears
 to be pregnant**

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

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

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

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

40 **§1856. Unjustifiable failure to execute sentence of death**

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

48 **§1857. Execution of death sentence**

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2 1. Execution. A death sentence must be executed by lethal
injection. The warden of the Maine State Prison shall designate
4 the executioner. The warrant authorizing the execution must be
read to the convicted person immediately before execution.

6 2. Warden or designee. The warden of the Maine State
Prison or the warden's designee must be present at the
8 execution. The execution must be carried out at the time
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
the Maine State Prison must witness the execution. The Chief
14 Medical Examiner or the medical examiner's designee must be
present to certify the death of the convicted person. Counsel
16 for the convicted person and clergy requested by the convicted
person may be present. Representatives of the news media may be
18 present under rules approved by the Commissioner of Corrections.
All other persons, except prison officers and guards, are
20 excluded. Rules adopted pursuant to this subsection are routine
technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

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

26 **§1858. Return of warrant of execution**

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

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

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

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

50 **§2131-A. Review of death sentence**

2 **1. Automatic sentence review.** When a person is sentenced
3 to death, the Supreme Judicial Court shall review the sentence in
4 accordance with this section. The sentence review is automatic
5 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
7 review are consolidated. For purposes of the sentence review,
8 the entire record of the proceedings of the trial court is
9 transmitted to the Supreme Judicial Court.

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

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

26 **Sec. 7. 17-A MRSA §201, sub-§2,** as amended by PL 2001, c. 383,
27 §8 and affected by §156, is further amended to read:

28 **2.** The sentence for murder is as authorized in chapter 51
29 except that, if the State pleads and proves that the crime of
30 murder was committed against a family or household member, the
31 sentence is as authorized in chapter 52-A.

32 **Sec. 8. 17-A MRSA §201, sub-§6** is enacted to read:

33 **6.** For the purposes of this section, "family or household
34 member" has the same meaning as in Title 19-A, section 4002,
35 subsection 4.

36 **Sec. 9. 17-A MRSA §1152, sub-§2, ¶¶K and L,** as enacted by PL
37 2003, c. 711, Pt. A, §9, are amended to read:

38 **K.** A fine, suspended in whole or in part, with, at the
39 court's discretion, administrative release as authorized by
40 chapter 54-G; or

41 **L.** A suspended term of imprisonment with administrative
42 release as authorized by chapter 54-G; or

2 **Sec. 10. 17-A MRSA §1152, sub-§2, ¶M** is enacted to read:

4 M. A sentence of death as authorized by chapter 52-A.

6 **Sec. 11. 17-A MRSA c. 52-A** is enacted to read:

8 **CHAPTER 52-A**

10 **CAPITAL PUNISHMENT**

12 **§1271. Authorized sentence**

14 A person who is convicted of murder under section 201 of a
16 family or household member is sentenced to death.

18 **§1272. Appeal of prior murder conviction**

20 If a person has been convicted of murder under section 201
22 and the offense upon which the conviction was based is finally
24 invalidated as a result of an appeal or collateral proceeding and
26 retrial, if any, the person may petition a court of competent
28 jurisdiction to be resentenced. If a subsequent conviction under
 section 201 results in the imposition of a sentence of death
 pursuant to section 1271 and the conviction for the prior offense
 is on appeal or is the subject of a collateral proceeding, the
 sentence of death may not be executed until after the final
 disposition of the appeal, collateral proceeding and retrial, if
 any.

32 **SUMMARY**

34 This bill reinstates the death penalty only for persons who
murder family or household members.