

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1516

H.P. 1061

House of Representatives, March 30, 2005

**An Act To Eliminate the 3-step Sentencing Procedure Relating to  
the Imposition of Sentencing Alternatives That Include  
Imprisonment**

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Reported by Representative BLANCHETTE of Bangor for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed under Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

4 **Sec. 1. 17-A MRSA §253, sub-§6**, as amended by PL 2001, c. 383,  
§20 and affected by §156, is repealed.

6 **Sec. 2. 17-A MRSA §1251, 2nd ¶**, as enacted by PL 1999, c. 536,  
§1, is amended to read:

8  
9  
10 In setting the length of imprisonment, if the victim is a  
11 child who had not in fact attained the age of 6 years at the time  
12 the crime was committed, a court shall assign special weight to  
13 this objective fact ~~in determining the basic sentence in the~~  
14 ~~first step of the sentencing process~~ and to any subjective victim  
15 ~~impact in exercising its sentencing discretion.~~ The court shall  
16 ~~assign special weight to any subjective victim impact in~~  
17 ~~determining the final sentence in the 2nd and final step in the~~  
18 ~~sentencing process.~~ Nothing in this paragraph may be construed  
19 to restrict a court in setting the length of imprisonment from  
20 considering the age of the victim in other circumstances when  
relevant.

22 **Sec. 3. 17-A MRSA §1252, sub-§5-B**, as enacted by PL 1999, c.  
23 536, §2, is amended to read:

24  
25 **5-B.** In using a sentencing alternative involving a term of  
26 imprisonment for a person convicted of the attempted murder,  
27 manslaughter, elevated aggravated assault or aggravated assault  
28 of a child who had not in fact attained the age of 6 years at the  
29 time the crime was committed, a court shall assign special weight  
30 to this objective fact ~~in determining the basic term of~~  
31 ~~imprisonment as the first step in the sentencing process~~ and to  
32 ~~any subjective victim impact in exercising its sentencing~~  
33 ~~discretion.~~ The court shall ~~assign special weight to any~~  
34 ~~subjective victim impact in determining the maximum period of~~  
35 ~~incarceration in the 2nd step in the sentencing process.~~ The  
36 court may not suspend that portion of the maximum term of  
37 imprisonment based on objective or subjective victim impact in  
38 arriving at the final sentence as the 3rd step in the sentencing  
39 process. Nothing in this subsection may be construed to restrict  
40 a court in setting a sentence from considering the age of the  
41 victim in other circumstances when relevant.

42  
43 **Sec. 4. 17-A MRSA §1252-C**, as enacted by PL 1995, c. 69, §1,  
44 is repealed.

45 **Sec. 5. 17-A MRSA §1252-D** is enacted to read:

46  
47 **§1252-D. Sentencing procedure relating to imposition of**  
48 **imprisonment**

49  
50

2 The procedure for imposition of a sentence that includes a  
3 term of imprisonment relative to murder or a Class A, B or C  
4 crime must be as set forth in the Maine Rules of Criminal  
5 Procedure, Rule 32(a) (3) and as determined by the Law Court in  
6 cases involving appellate review of sentences.

## 8 SUMMARY

10 The bill removes from the Maine Revised Statutes, Title 17-A  
11 the statutory requirement that courts engage in a specific 3-step  
12 process for determining sentences of imprisonment with respect to  
13 murder and Class A, B and C crimes. The 3-step process was  
14 enacted by the Legislature in 1995 and is based, almost verbatim,  
15 upon the so-called Hewey analysis first set forth by the Maine  
16 Law Court in the 1993 case of State v. Hewey, 622 A.2d 1151 (Me.  
17 1993).

18 Specifically, the bill repeals and replaces Title 17-A,  
19 section 1252-C, which required trial courts to follow the 3-step  
20 Hewey analysis when imposing sentences of imprisonment for murder  
21 and Class A, B and C offenses. The new section provides that  
22 when imposing such sentences, trial courts must adhere to the  
23 procedure set forth in the Maine Rules of Criminal Procedure,  
24 Rule 32(a)(3), which requires that reasons for a sentence be set  
25 forth on the record, and to the case law developed by the Law  
26 Court in the exercise of its appellate review of sentence  
27 function.

30 The bill also repeals Title 17-A, section 253, subsection 6,  
31 which set forth specific lengths of incarceration to be assigned  
32 in the 2nd step of the Hewey sentencing process for gross sexual  
33 assault offenders who had prior convictions for gross sexual  
34 assault and required that such incarceration not be suspended in  
35 the 3rd step of the process. In practice, sentences for gross  
36 sexual assault offenders who have prior convictions for gross  
37 sexual assault are so long that the minimum lengths of  
38 incarceration under Title 17-A, section 253, subsection 6 rarely  
39 came into play. Moreover, recently enacted Title 17-A, section  
40 1252, subsections 4-B and 4-C call for enhanced penalties for  
41 gross sexual assault offenders who have prior Class B or Class C  
42 convictions for gross sexual assault or for unlawful sexual  
43 contact.

44 In addition, the bill removes a requirement in Title 17-A,  
45 section 1251 that in murders involving children under the age of  
46 6, the age of the victim be given special weight in the first  
47 step of the Hewey sentencing process and replaces that  
48 requirement with an instruction to trial courts to give special  
49 weight to the victim's age in exercising their sentencing  
50

2 discretion. The new language is similar to language that already  
appears elsewhere in the Maine Criminal Code with regard to other  
aggravating factors.

4

6 Finally, the bill amends, in similar fashion, Title 17-A,  
section 1252, subsection 5-B, giving special consideration in the  
3-step process to the age of the victim with respect to sentences  
8 for attempted murder, manslaughter, elevated aggravated assault  
and aggravated assault committed against a child under 6 years of  
10 age.