

MAINE STATE LEGISLATURE

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March 27, 2007

**An Act To Create Indeterminate Sentencing and a Forensic Review
Board for Repeat Sexual Assault Offenders and Sexually Violent
Offenders**

Submitted by the Department of Corrections pursuant to Joint Rule 204.
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 DIAMOND of Cumberland.
Cosponsored by Senator: McCORMICK of Kennebec, Representatives: GREELEY of Levant,
TIBBETTS of Columbia.

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

2 **Sec. 1. 5 MRSA §12004-G, sub-§36** is enacted to read:

3 **36.**

| | | | |
|----------------------|------------------------|----------------------|------------------|
| 4 <u>Corrections</u> | <u>Sex Offender</u> | <u>Expenses Only</u> | <u>34-A MRSA</u> |
| 5 | <u>Forensic Review</u> | | <u>§5301</u> |
| 6 | <u>Board</u> | | |

7 **Sec. 2. 17-A MRSA §1152, sub-§2, ¶M**, as amended by PL 2005, c. 527, §12, is
8 further amended to read:

9 M. A split sentence of imprisonment with administrative release as authorized by
10 chapter 54-G; or

11 **Sec. 3. 17-A MRSA §1152, sub-§2, ¶N**, as enacted by PL 2005, c. 527, §12, is
12 amended to read:

13 N. A term of imprisonment followed by a period of supervised release as authorized
14 by chapter 50-; or

15 **Sec. 4. 17-A MRSA §1152, sub-§2, ¶O** is enacted to read:

16 O. An indeterminate sentence of imprisonment as authorized by chapter 54-H.

17 **Sec. 5. 17-A MRSA §1253, sub-§14** is enacted to read:

18 14. For any person who is sentenced pursuant to chapter 54-H, up to 5 days per
19 calendar month may be deducted from the sentence, calculated from the date of
20 commencement of that sentence as specified under subsection 1, whose conduct,
21 participation in programs and fulfillment of assigned responsibilities during that month
22 are such that the deduction is determined to be warranted in the discretion of the chief
23 administrative officer of the state facility.

24 A. Deductions under this subsection must be calculated as follows for partial
25 calendar months:

| 26 | <u>Days of partial month</u> | <u>Maximum deduction available</u> |
|----|------------------------------|------------------------------------|
| 27 | <u>1 to 6 days</u> | <u>up to 1</u> |
| 28 | <u>7 to 12 days</u> | <u>up to 2</u> |
| 29 | <u>13 to 18 days</u> | <u>up to 3</u> |
| 30 | <u>19 to 24 days</u> | <u>up to 4</u> |
| 31 | <u>25 to 31 days</u> | <u>up to 5</u> |

32

33 B. Any portion of the time deducted from the sentence of any person pursuant to this
34 subsection may be withdrawn by the chief administrative officer of the state facility
35 for a disciplinary offense or for the violation of any law of the State in accordance

1 with Title 34-A, section 3032 and the rules adopted under that section. Deductions
2 may be withdrawn for months already served or yet to be served by the person up to
3 and including the maximum authorized for that sentence.

4 C. The chief administrative officer of the state facility may restore any portion of
5 deductions that have been withdrawn if the later conduct, participation in programs
6 and fulfillment of assigned responsibilities of any person pursuant to this subsection
7 are such that the restoration is determined to be warranted in the discretion of the
8 chief administrative officer.

9 D. This subsection supersedes subsections 3, 3-B, 4, 5, 6, 8, 9 and 10 for a person
10 sentenced pursuant to chapter 54-H.

11 **Sec. 6. 17-A MRSA c. 54-H** is enacted to read:

12 **CHAPTER 54-H**

13 **INDETERMINATE SENTENCES FOR REPEAT SEXUAL ASSAULT**
14 **OFFENDERS AND SEXUALLY VIOLENT OFFENDERS**

15 **§1350-A. Indeterminate sentences**

16 1. Notwithstanding any other provision in this Title, if the State pleads and proves
17 that the defendant is a repeat sexual assault offender, the court may impose an
18 indeterminate sentence with a minimum of not less than 20 years, which may not be
19 suspended, and a maximum of life.

20 A. As used in this section, “repeat sexual offender” means a person who, on or after
21 October 1, 2007, commits a new gross sexual assault after having been convicted
22 previously and sentenced for any of the following:

23 (1) Gross sexual assault, formerly denominated as gross sexual misconduct;

24 (2) Rape;

25 (3) Attempted murder accompanied by sexual assault;

26 (4) Murder accompanied by sexual assault; or

27 (5) Conduct substantially similar to a crime listed in subparagraph 1, 2, 3 or 4
28 that is a crime under the laws of the United States or any other state.

29 The date of sentencing is the date of the oral pronouncement of the sentence by the
30 trial court, even if an appeal is taken.

31 B. “Accompanied by sexual assault,” as used with respect to attempted murder,
32 murder and crimes involving substantially similar conduct in other jurisdictions, is
33 satisfied if it was definitionally an element of the crime or was pleaded and proved
34 beyond a reasonable doubt at trial by the State or other jurisdiction.

35 2. Notwithstanding any other provision in this Title, if the State pleads and proves
36 that the defendant is a sexually violent offender, the court may impose an indeterminate
37 sentence with a minimum of not less than 20 years, which may not be suspended, and a

1 maximum of life except that the minimum term for a defendant who commits murder
2 accompanied by gross sexual assault must be 25 years, which may not be suspended.

3 A. As used in this section, "sexually violent offender" means a person who, on or
4 after October 1, 2007, commits any of the following:

5 (1) Murder accompanied by gross sexual assault;

6 (2) Attempted murder accompanied by gross sexual assault;

7 (3) Elevated aggravated assault accompanied by gross sexual assault;

8 (4) Elevated aggravated assault on a pregnant person accompanied by gross
9 sexual assault;

10 (5) Aggravated assault accompanied by gross sexual assault; or

11 (6) Conduct substantially similar to a crime listed in subparagraph 1, 2, 3, 4 or 5
12 that is a crime under the laws of the United States or any other state.

13 B. "Accompanied by gross sexual assault," as used with respect to a crime listed in
14 subparagraph 1, 2, 3, 4, 5 or 6, is satisfied if it was definitionally an element to the
15 crime or was pleaded and proved beyond a reasonable doubt at trial by the State or
16 other jurisdiction.

17 **§1350-B. Sentencing process**

18 In setting the minimum term of imprisonment pursuant to this chapter, the court shall
19 use the 3-step sentencing process and assign special weight to the factors set out in
20 section 1251 and section 1252, subsections 5-B and 5-C, as applicable. In setting the
21 appropriate length of the minimum term, as well as the appropriate length of the
22 maximum term, the court may not consider the potential impact of deductions under
23 section 1253, subsection 14 except in the context of a plea agreement in which both
24 parties are recommending to the court a particular disposition under the Maine Rules of
25 Criminal Procedure, Rule 11-A.

26 **Sec. 7. 34-A MRSA c. 5, sub-c. 2-A** is enacted to read:

27 **SUBCHAPTER 2-A**

28 **SEX OFFENDER FORENSIC REVIEW BOARD**

29 **§5301. Establishment**

30 There is established, by Title 5, section 12004-G, subsection 36, within the
31 Department of Corrections, the Sex Offender Forensic Review Board, referred to in this
32 subchapter as "the board," consisting of 5 members.

33 **§5302. Appointment**

34 The Governor shall appoint as the 5 members of the board a psychiatrist, a
35 psychologist, a sex offender community treatment provider, a prosecutor from the

1 Attorney General's office and a defense attorney, all of whom must be citizens and
2 residents of the State. The board members must be appointed no later than 2 years prior
3 to the date on which the first person sentenced under this chapter becomes eligible for a
4 review by the board.

5 **§5303. Terms**

6 The terms of the members of the board are 4 years plus the time period until their
7 successors have been appointed and qualified or at the pleasure of the Governor. The
8 members of the board are eligible for reappointment at the discretion of the Governor.

9 **§5304. Vacancy**

10 A vacancy on the board may be filled for the unexpired term in the same manner in
11 which an appointment is made.

12 **§5305. Expenses**

13 The members of the board are compensated according to the provisions of Title 5,
14 chapter 379.

15 **§5306. Meetings**

16 1. Chair. The members of the board shall elect a chair who shall preside at all
17 meetings of the board when the chair is present.

18 2. Frequency. The board shall meet as often as necessary, at such times and places
19 as the chair may designate.

20 3. Quorum. Any 3 members constitute a quorum for the exercise of all powers of
21 the board.

22 **§5307. Cooperation**

23 The Department of Health and Human Services, Department of Corrections and
24 officers and staffs of correctional facilities and law enforcement agencies in the State
25 shall cooperate with the board in exercising its powers and duties. The Department of
26 Corrections shall provide clerical staff to assist the board as necessary.

27 **§5308. Annual report**

28 1. Preparation of report. Beginning with the first year in which the board conducts
29 a review, after June 30th of each year, the commissioner shall prepare a detailed report of
30 the work of the board for the preceding fiscal year.

31 2. Commissioner's duty. The commissioner shall send the annual report to the
32 Governor for submission to the Legislature.

33 **§5309. Duties**

34 The board shall:

1 1. Determine whether and, if applicable, under what conditions a person who is
2 eligible for a review by the board and who applies for a review may be released to
3 community supervision; and

4 2. Revoke community supervision when warranted due to a violation of a condition
5 of release to community supervision.

6 **§5310. Powers**

7 1. Rules. The board may adopt rules, in accordance with Title 5, chapter 375,
8 subchapter 2-A, pertaining to its functions set out in this chapter. The rules are routine
9 technical rules.

10 2. Restitution. The board may authorize and impose as a condition of release to
11 community supervision that the person make restitution to the person's victim or other
12 authorized claimant in accordance with Title 17-A, chapter 54.

13 3. Quasi-judicial powers. The board or any member of the board may in the
14 performance of official duties:

15 A. Issue subpoenas;

16 B. Compel the attendance of witnesses;

17 C. Compel the production of books, papers and other documents pertinent to the
18 subject of its inquiry; and

19 D. Administer oaths and take the testimony of persons under oath.

20 4. Hearing. The board shall afford a person eligible for review under section 5311 a
21 hearing before the board and the board may not deny release to community supervision or
22 revoke release without affording the person a hearing.

23 **§5311. Review by the board**

24 1. A person who is sentenced and who has served the minimum term of years
25 imposed by the court, after consideration of any deductions that the person has received
26 and retained under Title 17-A, section 1253, is eligible for a review by the board. The
27 person may apply to the department for a review by the board no earlier than one year
28 prior to eligibility for the review.

29 2. Upon receipt of an application from a person eligible for a review, the department
30 shall prepare a report, which must include the facts and circumstances of the crimes
31 committed by the person, including, if possible, a victim impact and sentiment statement;
32 the results of the initial sex offender risk assessment instrument evaluation performed
33 upon the person's commitment to the department; a description of the department's
34 individualized case plan and any amendments to the case plan for the person; a
35 description of the person's participation in sex offender treatment and the outcome of the
36 treatment; the person's disciplinary and other relevant institutional history; the results of
37 any other sex offender risk assessment instrument evaluations performed by the
38 department, the most recent of which may be no older than 3 months prior to the date of
39 the application; and any other relevant information requested by the board. All

1 information obtained under this subsection, and any report furnished to the board under
2 this subsection, is confidential.

3 3. Upon receipt of the report from the department, the board shall convene a hearing
4 to review the application at a time and place designated by the chair. After the hearing,
5 the board members shall deliberate outside the presence of the participants and shall
6 make its decision by majority vote. The board shall reconvene with the participants
7 present and announce its decision, which must consist of a decision that either the person
8 continues to be imprisoned or is released to community supervision.

9 4. If the decision under subsection 3 is for continued imprisonment, the board shall
10 set the conditions and a date for the next review, with that date to be set not later than 5
11 years from the date of decision.

12 5. If the decision under subsection 3 is that the person is released to community
13 supervision, the board shall set conditions of supervision, which may include any
14 condition that may be imposed as a condition of probation pursuant to Title 17-A, section
15 1204 and any other condition that is appropriate. The conditions imposed may be as
16 stringent or restrictive as, but not more stringent or restrictive than, those that could be
17 constitutionally imposed if the person were actually housed in a maximum security
18 institution. The period of release to supervision in the community must equal the period
19 remaining until the expiration of the maximum term of the indeterminate sentence.
20 Supervision of the person in the community must be conducted by probation and parole
21 officers of the department.

22 **§5312. Revocation by the board**

23 1. If a probation and parole officer has probable cause to believe that a person
24 released by the board to supervision in the community has violated a condition of that
25 person's supervised release, that officer shall arrest the person or cause the person to be
26 arrested for the alleged violation and return the person to a correctional facility. An
27 administrative preliminary hearing meeting the requirements of due process must be held
28 before an official designated by the commissioner within 5 days after the arrest,
29 excluding Saturdays, Sundays and holidays.

30 2. After hearing, the board may revoke the release to community supervision for a
31 person who violates a condition of that release. If the board revokes the release, it shall
32 require the person to serve time in prison under the custody of the Department of
33 Corrections. This time in prison may equal all or part of the period remaining until the
34 expiration of the maximum term of the indeterminate sentence, without credit for time
35 served on release in the community. Any portion of the period that is not required to be
36 served in prison remains in effect and is subject to revocation at a later date.

37 **Sec. 8. 34-A MRSA §5404, sub-§2,** as amended by PL 2005, c. 488, §§23 and
38 24, is further amended to read:

39 **2. Arrest.** Arrest, after completing the entry level and orientation training course
40 prescribed by the commissioner, in the following circumstances:

1 A. Arrest violators of probation or supervised release for sex offenders ~~and~~, parole
2 violators ~~and~~ violators of conditions of release imposed by the Sex Offender Forensic
3 Review Board under subchapter 2-A and return parole violators ~~and~~ violators of
4 conditions of release imposed by the Sex Offender Forensic Review Board upon
5 request of the commissioner;

6 B. Arrest and return to a correctional facility persons released from the correctional
7 facility under section 3035 or transferred from the facility under section 3036-A; ~~and~~

8 C. If the officer has probable cause to believe that a person under the supervision of
9 the department has violated a condition of that person's probation, supervised release
10 for sex offenders, parole or intensive supervision, the officer may arrest that person;
11 and

12 D. If the officer has probable cause to believe that a person under the supervision of
13 the department has violated a condition of that person's release imposed by the Sex
14 Offender Forensic Review Board under subchapter 2-A, the officer shall arrest that
15 person or cause that person to be arrested;

16 **Sec. 9. 34-A MRSA §5404, sub-§3, ¶C**, as amended by PL 1995, c. 502, Pt. F,
17 §39, is further amended to read:

18 C. Keep informed of the conduct and condition of each person placed under the
19 officer's supervision and use suitable methods to encourage the person to improve
20 that person's conduct and condition; ~~and~~

21 **Sec. 10. 34-A MRSA §5404, sub-§3, ¶F** is enacted to read:

22 F. Supervise each person released to supervision in the community by the Sex
23 Offender Forensic Review Board under subchapter 2-A and placed under the officer's
24 supervision; and

25 SUMMARY

26 This bill implements the recommendations of the Department of Corrections made as
27 directed by Resolve 2005, chapter 132.