

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1865

H.P. 1195

House of Representatives, May 2, 2023

An Act Establishing the Maine Sentencing Guidelines Commission

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Speaker TALBOT ROSS of Portland.

Cosponsored by Representatives: MOONEN of Portland, RECKITT of South Portland.

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

2 **Sec. 1. 5 MRSA §960** is enacted to read:

3 **§960. Maine Sentencing Guidelines Commission**

4 **1. Major policy-influencing positions.** The following positions are major policy-
5 influencing positions within the Maine Sentencing Guidelines Commission, established by
6 section 12004-I, subsection 52-D. Notwithstanding any provision of law to the contrary,
7 these positions and their successor positions are subject to this chapter:

8 A. Research director.

9 **Sec. 2. 5 MRSA §12004-I, sub-§52-D** is enacted to read:

10 **52-D.**

11	Judiciary:	Maine Sentencing Guidelines	Expenses Only	17-A MRSA
12	Criminal Law	Commission		§1505

13 **Sec. 3. 17-A MRSA §1505** is enacted to read:

14 **§1505. Maine Sentencing Guidelines Commission**

15 **1. Commission established.** The Maine Sentencing Guidelines Commission,
16 established by Title 5, section 12004-I, subsection 52-D and referred to in this section as
17 "the commission," is created for the purpose of developing and adopting advisory
18 sentencing guidelines for murder and Class A, B and C crimes.

19 **2. Membership.** The commission consists of the following 19 members:

20 A. The Chief Justice of the Supreme Judicial Court or the Chief Justice's designee;

21 B. One Justice of the Superior Court, appointed by the Chief Justice of the Supreme
22 Judicial Court;

23 C. One Judge of the District Court, appointed by the Chief Justice of the Supreme
24 Judicial Court;

25 D. The Commissioner of Corrections or the commissioner's designee;

26 E. The Commissioner of Public Safety or the commissioner's designee;

27 F. A district attorney under Title 30-A, chapter 1, subchapter 5, appointed by the
28 Governor upon recommendation of an association of prosecutors in the State;

29 G. An attorney who primarily represents criminal defendants, appointed by the
30 President of the Senate upon recommendation of an association of criminal defense
31 lawyers in the State;

32 H. A probation and parole officer under Title 34-A, section 5404, appointed by the
33 President of the Senate;

34 I. One member who is a representative of a statewide legal aid organization, appointed
35 by the President of the Senate;

36 J. One member who is a representative of a statewide organization that focuses on
37 restorative justice, appointed by the President of the Senate;

1 K. One member with expertise in mental health issues, appointed by the President of
2 the Senate;

3 L. One member who was formerly incarcerated, appointed by the President of the
4 Senate;

5 M. Three members of the public, one of whom is a victim of a Class A, B or C crime,
6 appointed by the Speaker of the House of Representatives;

7 N. One member who is a representative of a statewide legal aid organization
8 specializing in criminal law, appointed by the Speaker of the House of Representatives;

9 O. One member who is a representative of a statewide civil rights organization that
10 focuses on advancing criminal justice, appointed by the Speaker of the House of
11 Representatives;

12 P. One member with expertise in substance use disorder, appointed by the Speaker of
13 the House of Representatives; and

14 Q. One member who was formerly incarcerated, appointed by the Speaker of the House
15 of Representatives.

16 When an appointing authority selects an individual for membership on the commission, the
17 appointing authority shall make reasonable efforts to appoint members that reflect the
18 diversity of the State's racial and gender demographics and qualified members of a
19 protected class as defined in Title 5, section 4553, subsection 8-F. For purposes of this
20 subsection, "restorative justice" means the rehabilitation of a criminal offender through
21 reconciliation with victims and the community at large.

22 **3. Chair; terms; vacancy; reappointment; other officers; quorum;**
23 **reimbursement.** The commission shall select one of its members to serve as chair of the
24 commission. Members of the commission are appointed for 3-year terms. Each member
25 continues in office until a successor is duly appointed. A vacancy on the commission must
26 be filled in the same manner as the original appointment was made under subsection 2.
27 Members are eligible for reappointment. The commission may elect any additional officers
28 necessary for the efficient discharge of the commission's duties. A quorum of the
29 commission consists of 10 members. Members are compensated as provided in Title 5,
30 chapter 379.

31 **4. Meetings; procedures.** The commission shall meet as necessary, but at least 2
32 times per year, to develop, adopt and modify sentencing guidelines and carry out other
33 duties under this section or as directed by the Legislature. The commission may establish
34 procedures to carry out its duties under this section.

35 **5. Sentencing guidelines advisory; do not create right; public policy.** The
36 sentencing guidelines are advisory and a court is encouraged to follow the sentencing
37 guidelines when sentencing a defendant, but a court shall follow the procedures of the
38 sentencing guidelines when pronouncing a sentence in a proceeding to which the
39 sentencing guidelines apply by operation of statute. Sentencing pursuant to the sentencing
40 guidelines is not a right that accrues to a defendant. The sentencing guidelines are a
41 procedure based on state public policy to maintain uniformity, proportionality, rationality
42 and predictability in sentencing similarly situated persons for similar crimes.

1 **6. Development and modification of sentencing guidelines.** The commission shall
2 develop sentencing guidelines to provide guidance to a court. In establishing and modifying
3 the sentencing guidelines, the primary considerations of the commission are public safety
4 and equal application of sentences under the law. The commission shall also consider
5 current sentencing and release practices, correctional resources, including the capacities of
6 state and local correctional facilities, and the long-term negative impact of the crime on the
7 community. The sentencing guidelines must be based on reasonable offense and offender
8 characteristics for murder and Class A, B and C crimes. The sentencing guidelines adopted
9 by the commission must establish:

10 A. The circumstances under which imprisonment of an offender is proper; and

11 B. Appropriate sanctions for offenders for whom imprisonment is not proper, making
12 specific reference to noninstitutional sanctions, including payment of fines, restitution,
13 community service, work release programs, community-based residential and
14 nonresidential programs, incarceration in a local correctional facility and probation.

15 **7. Clearinghouse and information center.** The commission shall serve as a
16 clearinghouse and information center for the collection, preparation, analysis and
17 dissemination of information on state and local sentencing practices and conduct ongoing
18 research regarding sentencing guidelines, use of imprisonment and alternatives to
19 imprisonment, plea bargaining and other matters relating to the improvement of the
20 criminal justice system. The commission shall from time to time make recommendations
21 to the Legislature regarding changes in the Maine Criminal Code, criminal procedures and
22 other aspects of sentencing, including information regarding the impact of statutory
23 changes to the State's criminal laws related to controlled substances.

24 **8. Study.** After the implementation of the sentencing guidelines, the commission shall
25 periodically study at least every 2 years the impact of the sentencing guidelines and review
26 the powers and duties of the Commissioner of Corrections.

27 **9. Administrative support; voluntary and uncompensated services; ability to**
28 **enter contracts; request information.** The judiciary shall provide adequate office space,
29 resources and administrative support for the commission. The commission may also utilize
30 the services, equipment, personnel, information and resources of another state agency with
31 the consent of the agency and may accept voluntary and uncompensated services, contract
32 with individuals and public and private agencies and request information, reports and data
33 from any agency of the State or any of its political subdivisions to the extent authorized by
34 law.

35 **10. Funds acceptance; borrowing prohibited.** If the Federal Government or a
36 person, corporation or any other entity offers funds to the commission to carry out the
37 commission's purposes and duties, the commission may accept the offer by majority vote
38 of its membership and upon acceptance the chair shall receive the funds subject to the terms
39 of the offer. Funds may not be accepted or received as a loan and the commission may not
40 incur any indebtedness except in the manner and under the limitations otherwise provided
41 by law.

42 **11. Research director; other staffing.** The commission may select and employ a
43 research director to perform the duties the commission directs, including the hiring of any
44 clerical help and other employees who the commission approves. The research director
45 position and compensation is in the unclassified service of the State under Title 5, chapter

1 71. The position and compensation of another staff member is pursuant to Title 5, chapter
2 372.

3 **12. Modification.** The commission shall meet as necessary, but at least 2 times per
4 year, for the purpose of modifying and improving the sentencing guidelines. Any
5 modification of the sentencing guidelines regarding severity levels and offender
6 characteristics or that results in the reduction of any sentence or in the early release of any
7 inmate, with the exception of a modification mandated or authorized by the Legislature or
8 relating to a crime created or amended by the Legislature in the preceding session, must be
9 submitted to the Legislature by January 15th of the year in which the commission wishes
10 to make the change. All other modifications take effect according to the procedures of the
11 commission under subsection 4. On or before January 15th of each year, the commission
12 shall submit a written report to the joint standing committee of the Legislature having
13 jurisdiction over judicial matters that identifies and explains all modifications made during
14 the preceding 12 months and all proposed modifications that are being submitted to the
15 Legislature that year.

16 **13. Rules.** The commission shall adopt rules to implement the sentencing guidelines.
17 Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter
18 375, subchapter 2-A.

19 **Sec. 4. Submission of sentencing guidelines.** By November 6, 2024, the Maine
20 Sentencing Guidelines Commission, established by the Maine Revised Statutes, Title 5,
21 section 12004-I, subsection 52-D, shall submit the sentencing guidelines, developed
22 pursuant to Title 17-A, section 1505, subsection 6, to the joint standing committee of the
23 Legislature having jurisdiction over judicial matters.

24 SUMMARY

25 This bill establishes the Maine Sentencing Guidelines Commission to develop, adopt
26 and modify sentencing guidelines for murder and Class A, B and C crimes to maintain
27 uniformity, proportionality, rationality and predictability in sentencing similarly situated
28 persons for similar crimes. The commission consists of 19 members including the Chief
29 Justice of the Supreme Judicial Court or the Chief Justice's designee and other members of
30 the judiciary, the Commissioner of Corrections or the commissioner's designee, the
31 Commissioner of Public Safety or the commissioner's designee, prosecuting and defense
32 attorneys, a probation and parole officer, 3 members of the public, one of whom is a victim
33 of a Class A, B or C crime, experts in mental health issues and substance use disorder,
34 formerly incarcerated persons and representatives of statewide organizations focusing on
35 legal aid, restorative justice and civil rights. The sentencing guidelines are advisory and
36 do not create a right for the defendant. If the commission determines it is necessary to
37 modify a guideline that results in the reduction of any sentence or in the early release of
38 any inmate, the commission is required to notify the Legislature. The commission also
39 serves as a clearinghouse and information center for the collection, preparation, analysis
40 and dissemination of information on state and local sentencing practices and conducts
41 ongoing research regarding sentencing guidelines, use of imprisonment and alternatives to
42 imprisonment, plea bargaining and other matters relating to the improvement of the
43 criminal justice system.