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House of Representatives, March 29, 2021

An Act To Establish Resentencing Units in the Attorney General's Office and All Maine Prosecutorial Districts

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R(+ B. Hunt

ROBERT B. HUNT Clerk

Presented by Representative EVANGELOS of Friendship. Cosponsored by Senator MIRAMANT of Knox and Representatives: HARNETT of Gardiner, NEWELL of the Passamaquoddy Tribe, O'NEIL of Saco, PLUECKER of Warren, SHEEHAN of Biddeford, WARREN of Hallowell, Senator: MAXMIN of Lincoln.

]	Be it enacted by the People of the State of Maine as follows:
	Sec. 1. 15 MRSA c. 301, sub-c. 5 is enacted to read:
	SUBCHAPTER 5
	RESENTENCING UNITS
	§1861. Resentencing units
	1. Resentencing units. The Attorney General and every district attorney under Title 30-A, chapter 1, subchapter 5 shall maintain within their respective offices a resentencing unit that timely reviews the sentences of imprisonment of criminal cases prosecuted by the Attorney General's or that district attorney's office that have not yet commenced or are ongoing to determine whether to reduce or terminate a sentence in the interests of fairness or justice.
-	2. Review. A resentencing unit shall review for reduction or termination under subsection 1 the following sentences:
	A. A sentence in which the person's current sentence is no longer necessary to ensure public safety or the interests of fairness or justice given the nature of the crime committed and the specific facts of the crime, with priority given to a person currently incarcerated who is either over 50 years of age or was sentenced for a crime committed as a minor;
	B. A sentence for a person who committed an offense under Title 17-A, section 202 in which the person did not commit the killing or have an intent to kill;
	C. A sentence of at least 5 years for a person who is eligible for release within the next 12 months;
	D. A sentence of a person who is suffering from a terminal or debilitating illness;
	E. A sentence in which an illegality or irregularity may exist or have been committed; and
	F. A sentence that the resentencing unit determines should be reviewed in the interests of fairness or justice.
	3. Recommendation; appeal. A resentencing unit shall make in a timely manner a recommendation to the Attorney General or district attorney in whose office the resentencing unit is located whether to reduce or terminate a sentence reviewed. The Attorney General or district attorney may reject, accept or modify a recommendation and file a petition under chapter 305-A of a sentence that the Attorney General or district attorney reduction or termination.
]	Sec. 2. 15 MRSA §2122, as amended by PL 2011, c. 601, §4, is further amended to read:
	§2122. Purpose
j	This chapter provides a comprehensive and, except for direct appeals from a criminal judgment, exclusive method of review of those criminal judgments and of post-sentencing

proceedings occurring during the course of sentences. It is a remedy for unfair, unjust or 1 2 illegal restraint and other impediments specified in section 2124 that have occurred directly 3 or indirectly as a result of an illegal criminal judgment or post-sentencing proceeding. It replaces the remedies available pursuant to post-conviction habeas corpus, to the extent 4 that review of a criminal conviction or proceedings were reviewable, the remedies available 5 pursuant to common law habeas corpus, including habeas corpus as recognized in Title 14, 6 sections 5501 and 5509 to 5546, coram nobis, audita querela, writ of error, declaratory 7 judgment and any other previous common law or statutory method of review, except appeal 8 of a judgment of conviction or juvenile adjudication and remedies that are incidental to 9 proceedings in the trial court. The substantive extent of the remedy of post-conviction 10 review is defined in this chapter and not defined in the remedies that it replaces; provided 11 that this. This chapter provides and is must be construed to provide relief for those persons 12 required to use this chapter as required by the Constitution of Maine, Article I, Section 10. 13

- 14 **Sec. 3. 15 MRSA §2125,** as amended by PL 2013, c. 266, §4, is further amended to 15 read:
- 16 **§2125.** Ground for relief

A person who satisfies the prerequisites of section 2124 may show that the challenged criminal judgment or sentence is unlawful or unlawfully imposed, or a sentence is unfair or unjust under section 1861 or that the impediment resulting from the challenged postsentencing proceeding is unlawful, as a result of any error or ground for relief, whether or not of record, unless the error is harmless or unless relief is unavailable for a reason provided in section 2126, section 2128 unless section 2128-A applies, or section 2128-B.

23 **Sec. 4. 15 MRSA §2126,** as amended by PL 2013, c. 266, §5, is further amended to read:

25 **§2126.** Exhaustion

26 A Except for a petition brought under section 1861, a person under restraint or 27 impediment specified in section 2124 must also demonstrate that the person has previously 28 exhausted remedies incidental to proceedings in the trial court, on appeal or administrative 29 remedies. A person who has taken an appeal from a judgment of conviction, a juvenile 30 adjudication or a judgment of not criminally responsible by reason of insanity is not 31 precluded from utilizing the remedy of this chapter while the appeal is pending. The post-32 conviction review proceeding is automatically stayed pending resolution of the appeal 33 unless the Appellate Court on motion and for good cause otherwise directs.

34 Sec. 5. 15 MRSA §2128, first ¶, as amended by PL 2011, c. 601, §9, is further 35 amended to read:

36 A Except for a petition brought under section 1861, a person under restraint or 37 impediment specified in section 2124 shall demonstrate that any ground of relief has not 38 been waived. The bases of waiver are as follows.

- 39 Sec. 6. 15 MRSA §2128-B, sub-§4 is enacted to read:
- 40 <u>4. Filing deadline for resentencing review.</u> A petition to reduce or terminate a
 41 sentence filed pursuant to section 1861 may be brought from the date of sentencing to the
 42 termination of the sentence.

1 Sec. 7. 15 MRSA §2129, sub-§1, as amended by PL 2003, c. 29, §3, is further 2 amended to read:

1. Filing of petition. Petitions shall <u>must</u> be filed as follows.

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4 A. A proceeding for post-conviction review shall <u>must</u> be commenced by filing a petition in the Superior Court in the county specified in section 2123.

6 B. If Except for a petition brought pursuant to section 1861, if the petitioner desires to have counsel appointed, he the petitioner shall file an affidavit of indigency in the form 7 8 prescribed by the Supreme Judicial Court. If the petitioner is incarcerated, the affidavit 9 shall must be accompanied by a certificate of the appropriate officer of the institution in which the petitioner is incarcerated as to the amount of money or securities on 10 deposit to the petitioner's credit in any account in the institution. The failure to include 11 an affidavit of indigency with the petition does not bar the court from appointing 12 13 counsel upon a subsequent filing of an affidavit of indigency.

C. Once the petition has been filed, the clerk shall forward a copy of the petition and any separate documents filed with it to the Chief Justice of the Superior Court and to the prosecutorial office that earlier represented the State in the underlying criminal or juvenile proceeding or, for a petition brought pursuant to section 1861, to the person whose sentence is being reviewed.

SUMMARY

20 This bill requires the Attorney General and every district attorney to maintain a 21 resentencing unit to review ongoing sentences of cases they prosecuted to determine 22 whether the sentences should be reduced or terminated in the interests of fairness or justice. 23 The resentencing units are to review sentences that are disproportionate based upon the 24 crime committed, especially for incarcerated people over 50 years of age or who committed 25 the offense as a minor, sentences of at least 5 years when release is 12 months or less away, 26 sentences for felony murder when the person did not commit the killing or intend to kill, 27 sentences for people with terminal or debilitating illnesses, sentences in which illegalities or irregularities may have occurred and any other sentences that the resentencing unit 28 29 determines should be reviewed in the interests of fairness or justice. The resentencing unit 30 makes a recommendation to the Attorney General or district attorney who may accept, 31 reject or modify the recommendation and may file a petition for resentencing review at any 32 time during the duration of the sentence to request the court for a reduction or termination 33 of the sentence.