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STATE OF MAINE HOUSE OF REPRESENTATIVES 132ND LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 1300, L.D. 1941, "An Act to Implement Recommendations of the Commission to Examine Reestablishing Parole"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'PART A

Sec. A-1. 5 MRSA §12004-G, sub-§7, as enacted by PL 1987, c. 786, §5, is amended to read:

7.

Corrections	State <u>Maine</u> Parole Board	Legislative Per	34-A MRSA
		Diem	§5201

Sec. A-2. 34-A MRSA §5001, sub-§1, as enacted by PL 1983, c. 459, §6, is amended to read:

1. Board. "Board" means the State Maine Parole Board.

Sec. A-3. 34-A MRSA §5201, as amended by PL 1989, c. 503, Pt. B, §160, is further amended to read:

§5201. Establishment

There is established, by Title 5, section 12004-G, subsection 7, within the Department of Corrections, a ~~State~~ the Maine Parole Board, consisting of ~~5~~ 7 members.

Sec. A-4. 34-A MRSA §5202, as enacted by PL 1983, c. 459, §6, is amended to read:

§5202. Appointment

The Governor shall appoint as the ~~5~~ 7 members of the board persons who: meet the requirements of this section, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature.

1 The Governor shall appoint an executive director who is the chief executive officer of
2 the board. In addition to responsibilities as chief executive officer, the executive director is
3 responsible for assisting the board with creating and maintaining parole guidelines for
4 parole evaluations and assessments consistent with section 5826 and up-to-date evidence-
5 based best practices. The executive director serves at the pleasure of the Governor. Except
6 as otherwise provided, the executive director shall, at the direction of the board, hire
7 personnel as necessary to administer this subchapter.

8 **1. Citizens and residents.** ~~Are citizens~~ Each member of the board must be a citizen
9 and residents a resident of the State; and,

10 ~~2. Training or experience. Have special training or experience in law, sociology,~~
11 ~~psychology or related branches of social science.~~

12 **3. Demographics, training and experience.** Beginning on the effective date of this
13 subsection, the Governor shall make every effort to ensure that:

14 A. At least one member of the board is a mental health professional;

15 B. At least one member of the board is an attorney licensed to practice law in this
16 State;

17 C. At least one member of the board has expertise and experience in the clinical
18 treatment of individuals who commit sexual violence offenses;

19 D. At least one member of the board is a member of a historically disadvantaged racial
20 population of the State;

21 E. At least one member of the board is a woman; and

22 F. At least one member of the board is a formerly incarcerated individual.

23 All other members of the board must have special training or experience in law, sociology,
24 psychology or a related branch of social science.

25 **Sec. A-5. 34-A MRSA §5203,** as enacted by PL 1983, c. 459, §6, is amended to
26 read:

27 **§5203. Terms**

28 The terms of the members of the board are: governed by the provisions of this section.

29 **1. Four years; reappointment.** ~~Four~~ Members are appointed for terms of 4 years
30 plus the time period until their successors have been appointed and qualified; or and may
31 be reappointed. A member may not be appointed to serve more than 2 consecutive 4-year
32 terms. A member continues to serve until that member has been reappointed or a successor
33 has been appointed and qualified.

34 ~~2. Pleasure of Governor. During the pleasure of the Governor.~~

35 **Sec. A-6. 34-A MRSA §5206,** as enacted by PL 1983, c. 459, §6, is amended to
36 read:

37 **§5206. Meetings**

38 **1. Chairman Chair.** The members of the board shall annually elect a chairman chair
39 who shall preside at all meetings of the board when he is present.

1 **2. Frequency.** The board shall meet at least once every ~~2 months~~ month and may
2 meet as often as necessary, at such times and places as the ~~chairman~~ board may designate
3 by a majority vote.

4 **3. Quorum.** Any ~~3~~ 5 members constitute a quorum for the exercise of all powers of
5 the board.

6 **Sec. A-7. 34-A MRSA §5208**, as amended by PL 1995, c. 502, Pt. F, §32, is further
7 amended to read:

8 **§5208. Annual report**

9 **1. Preparation of report.** ~~After June 30th of each year, the~~ The commissioner shall
10 prepare a detailed report of the work of the board and of probation and parole activities for
11 the preceding ~~fiscal~~ calendar year and send the report to the Governor as required by
12 subsection 2. Beginning January 2026, the report must include an update on the
13 implementation of subchapter 6 and any data collected and data analysis performed
14 pursuant to section 5832.

15 **2. Commissioner's duty Submission of report.** The commissioner shall send the
16 annual report to the Governor for submission to the joint standing committee of the
17 Legislature having jurisdiction over criminal justice and public safety matters by January
18 15, 2026, and annually thereafter.

19 **Sec. A-8. 34-A MRSA §5211, sub-§1**, as enacted by PL 1983, c. 459, §6, is
20 amended to read:

21 **1. Rules.** The board may ~~promulgate~~ adopt rules, ~~in accordance with the~~
22 ~~Administrative Procedure Act, Title 5, chapter 375,~~ pertaining to its functions set out in
23 this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined
24 in Title 5, chapter 375, subchapter 2-A.

25 **Sec. A-9. 34-A MRSA §5212** is enacted to read:

26 **§5212. Annual training**

27 The board shall arrange for annual training of board members from experts in the field
28 regarding best practices in evaluating applications for parole, in interpreting the results of
29 the evaluations and in designing appropriate conditions of parole.

30 **Sec. A-10. Maine Revised Statutes amended; revision clause.** Wherever in
31 the Maine Revised Statutes the words "State Parole Board" appear or reference is made to
32 that entity or those words, those words are amended to read or mean, as appropriate, "Maine
33 Parole Board" or "board" and the Revisor of Statutes shall implement this revision when
34 updating, publishing or republishing the statutes.

35 **Sec. A-11. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title
36 34-A, section 5203, subsection 1, the Governor shall, for the first 7 appointments made to
37 the Maine Parole Board after the effective date of this Act, specify the calendar year in
38 which each member's term expires in a manner that ensures that the terms of no more than
39 3 members of the board are scheduled to expire in any one calendar year. In no event may
40 the Governor appoint a member to the board for a term exceeding 4 years.

41 **Sec. A-12. Reappointment.** Notwithstanding the Maine Revised Statutes, Title
42 34-A, section 5203, subsection 1, an individual who is a member of the Maine Parole Board

on the effective date of this Act may be reappointed by the Governor. After a single reappointment of the member, the term of office for that member must comply with the requirements of Title 34-A, section 5203, subsection 1.

PART B

Sec. B-1. 34-A MRSA c. 5, sub-c. 6 is enacted to read:

SUBCHAPTER 6

PAROLE

§5821. Applicability

This subchapter applies to all persons in the custody of the Department of Corrections, except for persons in the custody of the department pursuant to a sentence imposed under the law in effect prior to May 1, 1976.

§5822. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Abscond. "Abscond" means, with respect to an individual on parole, the failure to remain within the jurisdiction of the court, unless permission to leave temporarily is granted in writing by the individual's probation and parole officer.

2. Applicant. "Applicant" means an individual who has applied for parole pursuant to section 5824.

3. Comprehensive assessment of risk and suitability. "Comprehensive assessment of risk and suitability" means an assessment of an individual that is designed to predict the likelihood that, given a certain decision pertaining to parole in an individual's case based on a thorough review of the totality of relevant factors and circumstances pertaining to the individual's conviction, incarceration, application for parole and, if applicable, the individual's activities and behavior since release, the individual will pose a threat to others or engage in criminal behavior, including violent criminal behavior. The assessment must include an assessment of the individual's ability to meet the physical, mental and moral qualifications for parole.

4. Evidence-based programming. "Evidence-based programming" means strategies and interventions that have been evaluated using empirical research and have been proven to increase the likelihood of achieving desired outcomes.

5. Parole plan. "Parole plan" means an explanation submitted as part of an applicant's application for parole detailing any plans or arrangements made to ensure that the applicant will successfully remain at liberty without violating the law or the conditions of the applicant's parole upon release, which may include details of any housing; employment; treatment; training; and any programs, services or opportunities of which the applicant intends to make use, or any other steps the applicant intends to take in order to support the applicant's successful reintegration upon release.

1 **6. Parolee.** "Parolee" means an individual who has been released on parole and is at
2 liberty pursuant to the conditions of the parole.

3 **7. Victim.** "Victim" means a victim of the underlying crime for which a specific
4 applicant or parolee was sentenced to the term of imprisonment for which a period of parole
5 has been requested or has been granted.

6 **§5823. Parole by board**

7 **1. Authority to grant or revoke parole.** With respect to an individual sentenced after
8 the effective date of this subchapter, the board may, by a majority vote, grant or revoke
9 parole as provided in this subsection. With respect to individuals sentenced between May
10 1, 1976 and the effective date of this subchapter, the board may by a vote of 5 or more
11 members of the board grant parole as provided in this subsection and by a majority vote
12 revoke parole as provided in this subsection.

13 A. The board may grant parole from a correctional facility and impose conditions of
14 parole on an applicant who satisfies the eligibility requirements set forth in section
15 5824, subsections 1 and 2.

16 B. The board may revoke parole or modify the conditions of parole in accordance with
17 section 5827 when a parolee violates a condition of that parolee's parole.

18 **2. Duration of parole.** When the board grants a parole, upon release, the parolee shall
19 serve the unexpired portion of the parolee's sentence, less deductions as provided in Title
20 17-A, chapter 81, subject to the conditions of parole set forth in subsection 3.

21 **3. Custody and conditions.** While on parole, the parolee is under the custody of the
22 chief administrative officer of the correctional facility from which the parolee was released
23 but under the immediate supervision of, and subject to the rules of, the department and any
24 conditions of parole imposed by the board pursuant to section 5825, subsection 5.

25 **§5824. Application and eligibility for parole; rulemaking**

26 **1. General provisions regarding eligibility.** Except as provided in subsection 2 and
27 as specified by the board in a parole revocation order, an individual convicted of one or
28 more crimes who is incarcerated and in the custody of the department is eligible for parole
29 upon application if the applicant has completed a parole preparation program offered by
30 the department within 90 days prior to applying for parole and if:

31 A. The individual's sentence was imprisonment for life and the individual has served
32 at least 20 years of that sentence; or

33 B. The individual's aggregate sentence was for a definite term of not less than 10 years,
34 and the individual has served no less than 1/2 of the aggregate, unsuspended portion of
35 that sentence or at least 20 years of that sentence, whichever is less.

36 **2. Additional eligibility requirements.** In addition to meeting the requirements of
37 subsection 1, paragraph A or B, an applicant who is serving a sentence imposed, at least in
38 part, on the basis of the applicant's conviction for:

39 A. One or more offenses in Title 17-A, chapter 11 or 12 is not eligible for parole unless
40 the applicant has completed intensive, evidence-based programming for sex offenders
41 while incarcerated;

1 B. One or more offenses in which the victim was a family or household member, as
2 defined in Title 19-A, section 4102, subsection 6, is not eligible for parole unless the
3 applicant has completed intensive, evidence-based programming for domestic violence
4 offenders while incarcerated; and

5 C. One or more offenses in Title 17-A, chapter 11, 12 or 35 in which at least one victim
6 was a minor at the time of the offense is not eligible for parole until all of the minor
7 victims have attained 25 years of age.

8 **3. Parole and parole revocation guidelines; rulemaking.** The board shall, by rule,
9 develop parole guidelines for use by the board in evaluating applications for parole as
10 described in section 5826 and parole revocation guidelines as described in section 5828 for
11 use by the board in considering revocation of parole.

12 **§5825. Procedure**

13 **1. Maine Administrative Procedure Act.** Except as provided in this subchapter, the
14 Maine Administrative Procedure Act, Title 5, chapter 375 governs all actions taken under
15 this chapter.

16 **2. Preliminary review.** Upon a preliminary review and determination that an applicant
17 is eligible for parole as described in section 5824, subsections 1 and 2, the board shall
18 schedule a hearing to be held within 60 days after the date that the application was
19 submitted or within 60 days after the date that the applicant appears to have met the
20 eligibility requirements of section 5824, subsections 1 and 2, whichever is later.

21 **3. Mandatory discovery.** No later than 30 days before the date of the hearing, the
22 department shall provide copies to the applicant or to the applicant's counsel, if any, of all
23 documents that the department submitted to the board in response to the application. The
24 department may withhold the current address or location of a victim from the applicant or
25 the applicant's counsel if the department has a good faith belief that such disclosure may
26 compromise the safety of the victim.

27 **4. Decision.** The board shall notify the applicant and the department in writing of its
28 final decision on the application within 45 days after the date of the hearing.

29 **5. Parole granted; conditions of parole.** If, after the hearing, the board grants the
30 parole application, the board shall impose conditions of parole in accordance with the
31 provisions of this subsection.

32 A. The conditions imposed by the board must include each of the mandatory conditions
33 that would apply to release on supervised community confinement set forth in section
34 3036-A, subsection 3, paragraphs A to I.

35 B. In addition to the mandatory conditions under paragraph A, if the board determines
36 based on the nature and circumstances of the offense that led to the parolee's
37 incarceration and the individual characteristics and criminal history of the parolee that
38 a condition in subparagraphs (1) to (3) is necessary to mitigate the risk that the parolee
39 will again violate the law, the conditions imposed by the board may include the
40 following:

41 (1) To the extent that the board determines that the parolee has financial resources,
42 a requirement that the parolee pay part or all of the costs to the State of the parolee's
43 parole;

(2) Any condition that may be imposed as a condition of probation pursuant to Title 17-A, section 1807; and

(3) Any condition that the board determines would be appropriate for the parolee.

6. Parole denied. If, after the hearing, the board denies the parole application, the board shall notify the applicant and the department, in writing, of the reasons for the denial and specify the date, which must be between one and 5 years after the date of the denial, after which the applicant may submit a new application for parole. In fixing this date, the board shall consider the input from the victim, if any, and the application of the parole guidelines. The board shall specify in the written notice of the denial the parole guideline factors that weighed against the applicant and the specific programs the applicant must complete or other activities the applicant must undertake to succeed in a subsequent parole application.

§5826. Parole guidelines

1. Parole guidelines. In accordance with the requirements of this section, the board shall, by rule, develop parole guidelines describing the risk assessment criteria that the board must consider in evaluating an application for parole.

2. Comprehensive assessment of risk and suitability. The parole guidelines must require that each applicant be evaluated through a comprehensive assessment of risk and suitability. The guidelines must direct that the outcome of the comprehensive assessment of risk and suitability is the central factor that the board must consider in making decisions related to parole. The board shall use the members' expertise and discretion in establishing these guidelines and shall develop the guidelines for the purposes of evaluating each applicant with respect to at least the following criteria:

A. Whether there is a reasonable probability that, if the applicant is released at a specific time, the applicant will live and remain at liberty without violating the law;

B. Whether the release of the applicant at a specific time is incompatible with the welfare of society;

C. Whether there is a substantial risk that the applicant will not conform to the conditions of parole;

D. Whether the applicant has demonstrated good behavior and significant efforts to rehabilitate or otherwise contribute to the likelihood of the applicant's successful reintegration with society, including by having participated in available work or educational opportunities or treatment programs or through other efforts as may be recognized by the board;

E. Whether the release of the applicant at a specific time would be likely to depreciate the seriousness of the applicant's crime or promote disrespect for the law;

F. Whether the applicant's continued incarceration is necessary to sufficiently ensure the applicant's ability to lead a law-abiding life when released at a later date;

G. Whether the release of the applicant at a specific time would be likely to have an adverse effect on institutional discipline;

I. The applicant's conduct while in custody, including the performance of any community service;

J. The adequacy of the applicant's parole plan;

1 K. Whether, while the applicant has been in custody, the applicant has threatened or
2 harassed the victim or the victim's family or has caused the victim or the victim's family
3 to be harassed by another person;

4 L. Whether the applicant has previously absconded or escaped or attempted to abscond
5 or escape while on conditional release;

6 M. Whether the applicant completed or worked toward completing a high school
7 diploma, a high school equivalency diploma, a college degree or a graduate degree
8 while the applicant was in custody; and

9 N. Any other factor the board determines appropriate or necessary to achieve a
10 comprehensive understanding of the applicant's risk and suitability for parole.

11 The board has the discretion to determine the extent to which each criterion listed in this
12 subsection contributes to the board's ultimate decision in an applicant's case.

13 **3. Other factors.** In addition to the comprehensive risk and suitability assessment
14 described in subsection 2, the parole guidelines must require that the board consider at least
15 the following additional criteria in making its decision regarding the timing of and
16 conditions of release on parole:

17 A. Any testimony or written statement from the victim, the victim's designee or a
18 relative of the victim;

19 B. The testimony or written statement of a prospective parole sponsor, employer or
20 other person who is available to assist the applicant if the applicant is released on
21 parole; and

22 C. Any aggravating or mitigating factors from the conviction leading to the applicant's
23 current incarceration, including whether the applicant was under 18 years of age at the
24 time of the crime.

25 **4. Parole guidelines for applicants convicted of sex offenses.** The board shall, by
26 rule, develop separate parole guidelines that the board must consider in evaluating an
27 application for parole from an applicant who is serving a sentence imposed, at least in part,
28 on the basis of the applicant's conviction for one or more offenses in Title 17-A, chapter
29 11, 12 or 35.

30 **5. Parole guidelines for applicants convicted of domestic violence offenses.** The
31 board shall, by rule, develop separate parole guidelines that the board must consider in
32 evaluating an application for parole from an applicant who is serving a sentence imposed,
33 at least in part, on the basis of the applicant's conviction for one or more offenses in which
34 the victim was a family or household member as defined in Title 19-A, section 4102,
35 subsection 6.

36 **6. Guidelines for board to adopt standards and conduct business.** The board shall
37 adopt standards for evaluating outcomes of its parole decisions and shall conduct its
38 business in a manner that is accessible to victims, applicants, criminal justice professionals
39 and the community. The board shall develop and use forms for recording a decision
40 whether to grant or to deny parole and, if parole is granted, identifying the conditions of
41 parole, that accurately capture the board's rationale, including how the board applied the
42 parole guidelines. The board shall ensure that the identity of any victim and any input

received from the victim is confidential and protected from display during any board hearing and on any form that may become part of an applicant's record.

7. Coordination of risk and needs. The board shall coordinate parole conditions and services with the assessed risk and needs as determined under the parole guidelines.

§5827. Violation of conditions of parole

1. Summons for violation. If a probation and parole officer has probable cause to believe that a parolee has violated a condition of parole and the officer does not believe there is a direct threat to public safety, the officer shall serve a summons on the parolee directing the parolee to appear before the board for a parole revocation hearing and shall provide a copy of the summons to the board.

2. Arrest and detention for violation. If a probation and parole officer has probable cause to believe that a parolee has violated a condition of parole and the officer believes there is a direct threat to public safety, the officer may arrest and charge the parolee with a violation of a condition of parole, take the parolee into custody and detain the parolee.

3. Parole revocation hearing. Upon notification of a summons issued pursuant to subsection 1 or an arrest under subsection 2, the executive director shall determine whether a probation revocation proceeding, administrative release revocation proceeding or supervised release revocation proceeding has also been initiated with respect to the parolee pursuant to Title 17-A, chapter 67. If at any point during a parole revocation proceeding under this section the executive director determines a revocation proceeding pursuant to Title 17-A, chapter 67 has been initiated with respect to the parolee, the board shall inform the court of the revocation. If no revocation proceeding pursuant to Title 17-A, chapter 67 has been initiated with respect to the parolee, the board shall schedule a parole revocation hearing to be held within 30 days of the date that the board is notified of a summons issued pursuant to subsection 1 or an arrest issued pursuant to subsection 2. Upon motion of the parolee, the department or the board, the board may extend the date of the hearing once, for no more than 30 days, for good cause shown. If the board extends the hearing date as provided in this subsection, it shall send a notice of the new hearing date and the reason for the extension to the department, to the parolee and, if counsel has entered an appearance for the parolee before the board, to the parolee's counsel.

4. Deductions forfeited upon revocation. If the board revokes a parolee's parole, the parolee forfeits any deductions under Title 17-A, section 2305 or 2307 earned while on parole.

5. Earning deductions. While an individual is serving the unexpired portion of a sentence after parole has been revoked, the individual may earn deductions pursuant to Title 17-A, chapter 81.

6. Jurisdiction. A court of competent jurisdiction in which a probation revocation proceeding, administrative release revocation proceeding or supervised release revocation proceeding pursuant to Title 17-A, chapter 67 has been initiated with respect to a parolee has exclusive jurisdiction over any parole revocation proceeding regarding the parolee.

7. Counsel. A parolee who has been arrested for an alleged violation of parole has the right to be represented by counsel at the parole revocation hearing, and if requested, the court shall appoint counsel for an indigent party if the party is not already represented.

§5828. Parole revocation guidelines

1 **1. Parole revocation guidelines.** In accordance with the requirements of this section,
2 the board shall, by rule, develop parole revocation guidelines describing the criteria that
3 the board must consider during a parole revocation hearing.

4 **2. Comprehensive assessment of risk and suitability.** The parole revocation
5 guidelines must require that each parolee subject to a parole revocation hearing be
6 evaluated through a comprehensive assessment of risk and suitability and that the outcome
7 of the assessment is the central factor that the board must consider, after finding that a
8 parolee violated a condition of the parolee's parole, in deciding whether to revoke parole
9 or to modify the conditions of the parolee's parole. Through the assessment, the board shall
10 evaluate the parolee with respect to whether public safety and respect for the law can
11 adequately be protected by modifying the conditions of the parolee's parole or whether
12 revocation of the parolee's parole is necessary. The board shall use the members' expertise
13 and discretion in establishing these guidelines and shall develop the guidelines for the
14 purposes of evaluating each parolee with respect to, at least, the following criteria:

15 A. The seriousness and frequency of the parolee's violations of the conditions of parole;

16 B. Whether the parolee has been charged with or convicted of committing a crime while
17 released on parole;

18 C. The parolee's efforts to comply with any sanctions imposed under section 5827 for
19 a technical violation of a condition of parole and with any modified conditions of parole
20 imposed by the board under section 5827 for a previous violation of a condition of
21 parole;

22 D. Any mitigating factors, including substance use disorder or mental health
23 conditions, that may have contributed to the parolee's violation of a condition of parole;
24 and

25 E. Any other factor that the board determines appropriate or necessary.

26 The board has the discretion to determine the extent to which each criterion listed in this
27 subsection contributes to the board's ultimate decision to revoke or to modify the conditions
28 of a parolee's parole.

29 **3. Time before reapplying for parole.** The parole revocation guidelines must include
30 guidelines for the board to apply when deciding the time that must expire before a parolee
31 whose parole has been revoked may reapply for parole in accordance with section 5824.

32 **§5829. Sentence for crime committed by parolee**

33 Except as otherwise specified by a court imposing the sentence for a new crime, a
34 parolee who commits a new crime while on parole and who is sentenced to the custody of
35 the department for the new crime must serve the sentence for the new crime concurrently
36 with the unexpired portion of the sentence that was the subject of the parolee's parole.

37 **§5830. Discharge from parole**

38 A parolee who faithfully satisfies all of the conditions of parole and who completes the
39 parolee's sentence is entitled to a certificate of discharge to be issued by the chief
40 administrative officer of the correctional facility to which the parolee was committed.

41 **§5831. Victim rights**

1 1. Notice. The Office of Victim Services, established in section 1214 and referred to
2 in this section as "the office," shall make reasonable efforts to notify each victim of the
3 following with respect to the relevant applicant or parolee:

4 A. That the applicant has applied for parole;

5 B. The date of each parole hearing or parole revocation hearing;

6 C. The outcome of each parole hearing, including information on any conditions of
7 parole imposed by the board if parole was granted, and the outcome of each parole
8 revocation hearing;

9 D. The fact that the applicant has submitted a petition under Title 5, chapter 375,
10 subchapter 7 for judicial review of a board decision denying parole; and

11 E. The outcome of any petition for judicial review of a board decision denying parole.

12 2. Rights. When providing a notice under subsection 1, the office shall provide a victim
13 with a pamphlet that summarizes in everyday language the provisions of this subchapter;
14 informs the victim of any services or supports available to the victim and clearly explains
15 how to access these services and supports, including any restorative justice programs,
16 victim advocacy services and counseling for victims provided either by the department or
17 by independent victim support organizations; and informs the victim that the victim has the
18 following rights:

19 A. The victim may testify in person at the parole hearing or have another person of the
20 victim's choosing read the victim's testimony at the parole hearing. If the victim
21 testifies in person at or attends the parole hearing, the victim may be accompanied by
22 a support person and may, with the assistance of the office, request that the board
23 conduct the hearing outside of a correctional facility and request that the board exclude
24 the applicant from the room during the victim's testimony; and

25 B. If the victim does not wish to testify at the parole hearing or have another person
26 read the victim's testimony at the parole hearing, the victim may, prior to the parole
27 hearing, submit to the office written or recorded testimony or may revise or retract any
28 written or recorded testimony previously submitted to the office. The office shall
29 submit to the board the most recent written or recorded testimony received from the
30 victim under this paragraph for consideration during the parole hearing.

31 3. Records. Any written or recorded testimony received by the board or by the office
32 under this section may not be included in the applicant's or the parolee's records maintained
33 by the department or a correctional facility.

34 **§5832. Collection and analysis of data**

35 1. Outcome data and analysis. The board shall develop and implement a process to
36 collect and analyze data related to the board's determinations or decisions for granting,
37 denying or revoking parole. Any data related to victim identification or victim input that
38 is personally identifiable to the applicant or parolee or the applicant's or parolee's case must
39 be maintained and kept confidential by the board and may be released only to other
40 government agencies, pursuant to a nondisclosure agreement, for purposes of analysis and
41 reporting only.

42 2. Recidivism data. When the board grants parole, the board shall collect data related
43 to the type of reentry programs provided as part of the parolee's parole plan and whether

1 the parolee is rearrested or returned to the correctional facility for a violation of a condition
2 of parole or for a new criminal conviction.

3 **3. Record of conformance with or departure from guidelines.** The board shall
4 determine whether a decision granting or denying parole conformed with or departed from
5 the parole guidelines developed under section 5826 and whether a decision revoking or not
6 revoking parole conformed with or departed from the parole revocation guidelines
7 developed under section 5828.

8 **4. Reporting.** The board shall provide the data collected pursuant to this section to the
9 commissioner for inclusion in the annual report required by section 5208, subsection 1.
10 Using the data collected pursuant to this subsection, the department shall assist the board
11 in identifying specific factors that are necessary to the board's parole decision-making
12 process and shall assist the board in securing training to facilitate the board's future decision
13 making.

14 **5. Notice to correctional facility.** The board shall provide a copy of any decision to
15 grant or deny parole and of any decision to revoke or not to revoke parole to the correctional
16 facility from which a parolee was paroled or in which an applicant resides, as applicable.

17 **PART C**

18 **Sec. C-1. 17-A MRSA §1603, sub-§1,** as enacted by PL 2019, c. 113, Pt. A, §2, is
19 amended to read:

20 **1. Sentence.** A person convicted of the crime of murder must be sentenced to
21 imprisonment for life, with or without the possibility of parole, or for any term of years that
22 is not less than 25. The sentence of the court must specify the length of the sentence to be
23 served and must commit the person to the Department of Corrections.

24 **Sec. C-2. 17-A MRSA §1604, sub-§2, ¶A,** as enacted by PL 2019, c. 113, Pt. A,
25 §2, is amended to read:

26 A. In the case of the Class A crime of aggravated attempted murder, the court shall set
27 a term of imprisonment under section 152-A, subsection 2 of life, with or without the
28 possibility of parole, or a definite period of any term of years;

29 **PART D**

30 **Sec. D-1. Applicability.** Notwithstanding the Maine Revised Statutes, Title 34-A,
31 section 5824, a person who is incarcerated and in the custody of the Department of
32 Corrections on the effective date of this Act is not eligible for parole until at least 5 years
33 after the effective date of this Act.

34 **PART E**

35 **Sec. E-1. Appropriations and allocations.** The following appropriations and
36 allocations are made.

37 **CORRECTIONS, DEPARTMENT OF**

38 **Administration - Corrections 0141**

39 Initiative: Establishes one Secretary Specialist position and related All Other costs to
40 establish parole for individuals sentenced to the custody of the Department of Corrections
41 after May 1, 1976.

1	GENERAL FUND	2025-26	2026-27
2	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
3	Personal Services	\$0	\$102,341
4	All Other	\$0	\$12,806
5			
6	GENERAL FUND TOTAL	\$0	\$115,147

7 **Adult Community Corrections 0124**

8 Initiative: Establishes 18 Probation Officer positions and related All Other costs to establish
9 parole for individuals sentenced to the custody of the Department of Corrections after May
10 1, 1976.

11	GENERAL FUND	2025-26	2026-27
12	POSITIONS - LEGISLATIVE COUNT	0.000	18.000
13	Personal Services	\$0	\$719,384
14	All Other	\$0	\$153,103
15			
16	GENERAL FUND TOTAL	\$0	\$872,487

17 **Office of Victim Services 0046**

18 Initiative: Establishes one Advocate position and related All Other costs to establish parole
19 for individuals sentenced to the custody of the Department of Corrections after May 1,
20 1976.

21	GENERAL FUND	2025-26	2026-27
22	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
23	Personal Services	\$0	\$101,613
24	All Other	\$0	\$12,806
25			
26	GENERAL FUND TOTAL	\$0	\$114,419

27

28 **CORRECTIONS, DEPARTMENT OF**
29 **DEPARTMENT TOTALS**

30		2025-26	2026-27
31	GENERAL FUND	\$0	\$1,102,053
32			
33	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$1,102,053

34

35 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
36 number to read consecutively.

37 **SUMMARY**

38 This amendment replaces the bill and clarifies provisions of the bill in the following
39 ways.

40 1. It requires the executive director of the Maine Parole Board to create and maintain
41 parole guidelines for parole evaluations and assessments consistent with the Maine Revised

1 Statutes and up-to-date evidence-based best practices in the field of parole evaluations and
2 assessments.

3 2. It requires that at least one member of the board be a member of a historically
4 disadvantaged racial population of the State and that at least one member be a woman.

5 3. It adds a definition for “comprehensive assessment of risk and suitability” and
6 clarifies that the parole guidelines require a comprehensive assessment of risk and
7 suitability evaluation as part of an application for parole and for revocation of parole.

8 4. It clarifies that, in the absence of specific procedural provisions, the Maine
9 Administrative Procedure Act governs all procedures of the board.

10 **FISCAL NOTE REQUIRED**

11 (See attached)

Excerpt from 2022 Parole Report

Corrections, to hear directly from the people who would be most directly affected by the reestablishment of parole. A full list of presentations, written testimony, and submissions to the commission can be found in Appendices E and K.

In its examination of the prison system in Maine, the commission found the disparities in the racial demographics between those incarcerated in Maine and the general population of the State to be staggering. The disparities are clearly represented in the Maine Department of Corrections Year-End Adult Data Reports from 2021 and 2020,² which include data showing that 18% of the male prison population and 12% of the female prison population is non-white, whereas only 5.8% of the state population is non-white, as of the last census.³ These disparities are further reflected in the length of sentences received, and access to currently provided pathways for early release, such as the Supervised Community Confinement Program. This is a glaring injustice that must be addressed in order to ensure a criminal justice system that is fair and just.

Resolve 2021, chapter 126, charged the commission with submitting a report of its findings and recommendations, including any suggested legislation, to the Joint Standing Committee on the Judiciary by December 1, 2022. The following sections provide a brief history and background of parole in Maine, a brief overview of Maine's current systems for early release, and an outline of the commission's process over the course of its five meetings. The commission's findings and recommendations are discussed in Section IV.

II. BACKGROUND & HISTORY

A. The Establishment of Parole in Maine

The history of parole in Maine dates back to 1913 when the Maine Legislature passed Public Law 1913, chapter 60, establishing a system of parole, the State's first parole board,⁴ and replacing the State's "determinate" sentencing system, where a person would receive a sentence for a fixed period of time, with what would later become known as "indeterminate" sentencing, which generally refers to systems where a person's sentence is open for reevaluation by corrections administrators.⁵ For those issued and serving sentences, this change meant they

² Me. Dep't of Corrections, (2021) *Year End Data Report 2021*.

³ U.S. Census Bureau (2020). *Quick Facts*. Retrieved from: <https://www.census.gov/quickfacts/ME>.

⁴ This coincided with the creation of the State Board of Charities and Corrections, which became Department of Public Welfare and the Bureau of Institutional Services in 1931, then the Department of Institutional Services in 1939, and then the Department of Mental Health and Corrections in 1959. The Bureau of Corrections was created in 1967, and it was not until 1981 that the Legislature created the Department of Corrections. See Maine State Archives webpage: <https://www.maine.gov/sos/arc/>.

⁵ Prior to the establishment of parole, Maine's system was referred to as a "definite" sentencing system, however the features of that system are encompassed with what later became known as "determinate" sentencing. As applied to sentencing "determinate" and "indeterminate" are terms that refer to general theories of sentencing, rather than specific systems. "Determinate" sentencing models aim to provide a clearly set amount of time that a person will serve their sentence. "Indeterminate" sentencing models create flexibility to reevaluate and adjust time served based

would receive a range of time to be served, set between a minimum and a maximum length, and become eligible for parole at the expiration of their minimum sentence. For example, a person who would have previously been sentenced to a fixed term of 10 years in prison, not open for reevaluation, would instead receive a sentence with a minimum and a maximum length of time as determined appropriate by the sentencing judge, and receive a hearing by the parole board at the expiration of the minimum term.

At the time, the statutory minimum for sentences of more than two years was one-half of the sentence maximum. This meant a sentence with a 10-year maximum would have a 5-year minimum, and the statutory minimum for a sentence of less than two years was set at 1 year, meaning that a sentence with a 1.5 year maximum would have a 1 year minimum.

With the exception of those convicted of two or more prior felonies, and those convicted of life sentences, all people imprisoned by the State were eligible for parole after serving their minimum sentence, as adjusted for “good-time” credits.⁶ As it was established in 1913, the following is a basic outline of Maine’s system of parole.

1. During the sentencing stage, the judge, if having decided incarceration was appropriate, would set a minimum and maximum term of confinement.
2. Once a person had served their minimum sentence, as adjusted for good-time credits, they would become eligible for review by the parole board.⁷
3. If, upon review of a person’s application for parole, it was determined that parole was appropriate, the person would be released on parole under the expectation of compliance with a number of conditions.⁸
4. The person would serve the remainder of their term on parole, as long as they did not violate the conditions set by the parole board. If a person violated the conditions, the parole board had the authority to return the person to prison.

A person released on parole was still considered to be serving their sentence and remained “in the legal custody and under the control of the warden or superintendent of the prison from which he is paroled and shall be subject at any time to be taken back within the enclosure of said prison

on the individual circumstances of each person sentenced. *For further discussion of these sentencing models see Donald F. Anspach, Peter M. Lehman & John H. Kamer, Maine Rejects Indeterminacy: A Case Study of Flat Sentencing and Parole Abolition*, 1-7, 34-37 (University of Southern Maine, funded by Dep’t of Justice 1983). Accessible at: <https://www.ojp.gov/pdffiles1/Digitization/94367NCJRS.pdf>; Melvyn Zarr, *Sentencing*, 28 ME. L. REV. 117 (1976). For further discussion regarding how sentencing worked prior to the establishment of the Maine Criminal Code see also Zarr, *Sentencing*, 135-143 (1976).

⁶ “Good time” is the term used to describe the practice of reducing the number of days a person is required to serve by meeting certain conditions, such as good behavior or participation in rehabilitation programs. Maine’s statutory provisions regarding the deduction of time from sentences are located in Title 17-A M.R.S. §2305 (2022).

⁷ For certain cases the authority to grant parole was conferred exclusively on the Governor, see P.L. 1913, ch. 60, §6.

⁸ P.L. 1913, ch. 60, §§7-14; for a further outline of how parole operated prior to the establishment of the Maine Criminal Code, see also Zarr, *Sentencing*, 135-143 (1976).

for any reason that may be satisfactory to the warden or superintendent.”⁹ This aspect of parole distinguished it from the Governor’s pardon power, since a person on parole was still under the custody of the State and could be brought back to prison for violating the conditions of release.

B. The Distinction Between Parole and Pardon

The distinction between parole and the Governor’s pardon power, as set forth in Article V. Section 11 of the Maine Constitution, has been a recurring issue over the history of parole in Maine. By 1965 the Legislature included a provision explicitly distinguishing parole from the Governor’s pardon and commutation power.¹⁰ Later, in 1986, the distinction was further addressed by the Supreme Judicial Court of Maine in the seminal case *Gilbert v. State* when the Court noted that parole “does not shorten the length of a sentence. Instead, parole is a change in the manner in which a sentence is served in that the parolee remains under the custody of the institution from which he is released but executes the unexpired portion of his sentence outside of confinement.”¹¹ Concerns regarding the possibility that reestablishing parole in Maine could potentially infringe on the Governor’s pardon power were even expressed in testimony at the public hearing for the bill that eventually became the establishing Legislation for this commission, LD 842, as considered by the Joint Standing Committee on Judiciary during the 130th Legislature.¹²

C. The Eligibility of Life Sentences for Parole

The Maine Revised Statutes underwent a recodification in 1964 which resulted in the creation of the Maine Revised Statutes Title 34, in 1965. This title contained the laws regarding parole in Maine and would eventually be replaced by Title 34-A in 1976, with the establishment of the Criminal Code and the abolition of parole in Maine for sentences issued moving forward.¹³ Despite undergoing many modifications, the basic structure of parole in Maine remained the same through the 1965 recodification and up until 1976. However, by 1965 numerous provisions had been added to the structure of parole in Maine, including permitting parole for certain life sentences.¹⁴

As originally established in Maine, parole excluded persons “convicted of an offense the only punishment for which prescribed by law is imprisonment for life” from eligibility.¹⁵ That

⁹ P.L. 1913, ch. 60, §9.

¹⁰ 34 M.R.S.A. §1551 (1965).

¹¹ *Gilbert v. State*, 505 A.2d 1326, at 1328 (Me.1986).

¹² Attorney General, Letter to Judiciary Committee Re: LD 842 (April 22, 2021). Available at: <https://legislature.maine.gov/testimony/resources/JUD20210422Frey132635724255775862.pdf>; Criminal Law Advisory Commission, Memo to Committee on Judiciary Re: LD 842 (April 19, 2021). Available at: <https://legislature.maine.gov/testimony/resources/JUD20210422Pelletier132633358310883534.pdf>; for a full list of written testimony see also http://www.mainelegislature.org/legis/bills/display_ps.asp?id=842&PID=1456&snum=130#; Maine 130 - H.P. 610, Item 1 (LD 842) is available in Appendix J.

¹³ The parole statutes are now located in 34-A M.R.S.A. Chapter 5 (2022).

¹⁴ 34 M.R.S.A. §1672 (1965).

¹⁵ P.L. 1913 ch. 60, §3.

provision remained until 1953, when the 96th Legislature reversed course and explicitly made parole available for persons convicted of life sentences.¹⁶ By the time of the 1964 recodification, the Legislature had included provisions further specifying how parole would apply to life sentences.¹⁷ A person serving a life sentence would only become eligible for a hearing by the parole board after serving 30 years of imprisonment, less deductions for good behavior,¹⁸ and the parole board was prohibited from discharging a parolee convicted of a life sentence until that person had been on parole for at least 10 years.¹⁹ Immediately prior to the 1976 enactment of the Criminal Code, and the elimination of parole in Maine, the minimum time of incarceration for a person serving a life sentence to be eligible for a hearing by the parole board had been reduced from 30 years to 15 years.²⁰

Currently, for those convicted prior to the enactment of the Criminal Code in 1976, the relevant provisions are located in Title 34-A, Chapter 5. A person serving a life sentence only becomes eligible for a hearing by the parole board after serving 15 years of imprisonment, less deductions for good behavior.²¹ The parole board is prohibited from discharging a parolee convicted of a life sentence until that person has been on parole for at least 10 years.²²

D. Establishment of the Criminal Code and Abolition of Parole

Commenters have noted that the underlying design of Maine's indeterminate sentencing system and system of parole was an attempt at a rehabilitative model of justice.²³ The efficacy of rehabilitative models came under scrutiny during the 1970s, alongside a nationwide reevaluation of the criminal justice system that resulted in a move toward determinate sentencing.²⁴ Driving this reevaluation was a broad range of concerns regarding the criminal justice system, influenced by changing attitudes about the possibility of rehabilitating offenders. Also present were concerns around the amount of discretion available to corrections administrators and concerns

¹⁶ P.L. 1953 ch. 382.

¹⁷ 34 M.R.S.A. §§181-195 (1965).

¹⁸ 34 M.R.S.A. §1672, sub-§3 (1965).

¹⁹ 34 M.R.S.A. §1678 (1965).

²⁰ 34 M.R.S.A. §1672 (Supp. 1973). This citation is based on the M.R.S.A. Volume 15, 1973 Supplementary Pamphlet. Staff worked with the Law and Legislative Reference Library to locate this provision. The 1973 Supplementary Pamphlet was the closest record staff could locate. The 1974 Supplementary Pamphlet, does not include these sections and the 1975 Supplementary Pamphlet shows these sections as repealed. As discussed in footnote 41, the Criminal Code was passed in 1975 and became effective in 1976. The reduction to 15 years for cases of life imprisonment shown in the 1973 Supplementary Pamphlet is consistent with the current provisions for those sentenced prior to the establishment of the Criminal Code in 1976, under 34-A M.R.S.A. §5803 (2022).

²¹ 34-A M.R.S.A. § 5803, sub-§3 (2022).

²² 34-A M.R.S.A. § 5809 (2022).

²³ Anspach et al, *Maine Rejects Indeterminacy*, 19 (1983).

²⁴ Michael Kebede, American Civil Liberties Union of Maine, presentation to the commission titled "The History and Constitutionality of Parole in Maine", Sept 8, 2022. Appendix L.

regarding predictability, transparency, and fairness in sentencing.²⁵ One commenter noted additional complicating pressures as follows:

“Prison officials were exerting pressure to release prisoners as a means of reducing prison crowding. Opposing pressures came from the media, victims, and elected officials to keep more offenders incarcerated, especially those involved in violent or sensational crimes. Parole boards were also attempting, in some states, to use parole release as a means of reducing the disparity of sentences handed down by criminal courts. And despite pressure to base parole decisions on objective criteria, many paroling officials resisted in order to permit some flexibility to balance interests of the diverse pressure groups in their decisions. But such subjectivity and the inability to articulate a clear mission complicated and weakened the ability of parole proponents to defend it.”²⁶

It is in this context that in 1971, Maine’s 104th Legislature passed an “Act to Create a Commission to Prepare a Revision of the Criminal Laws.” This law created the Criminal Law Revision Commission (the “Revision Commission”), which was tasked with drafting a complete revision of the criminal laws in Maine to create “a fully modern, integrated and consistent criminal code.”²⁷ The Revision Commission began meeting in April 1972 and, over the course of 45 meetings, completed its work in 1975.²⁸ The Revision Commission’s work focused on numerous aspects of Maine’s criminal laws and provided major changes such as: uniformity of definitions; the decriminalization of offenses deemed “not of sufficient threat to public order” to require criminal penalties; and the creation of the offense classification system currently used in Maine.²⁹ The preamble to the Criminal Code also noted that while the commission’s work was the result of much compromise and the need to make difficult choices, ultimately “the revision as a whole represented a reasonable balance between compassion for the offender and a concern for the interests of society.”³⁰

Some of the Revision Commission’s work was handled by designated subcommittees that focused on particular areas of the criminal law. The Revision Commission’s Subcommittee on Sentencing (the “Sentencing Subcommittee”) was tasked with restructuring Maine’s sentencing provisions.³¹ The Sentencing Subcommittee considered two separate sentencing models for incorporation into the Criminal Code. The first model limited the discretion of the judicial branch and expanded Maine’s system of parole, providing greater discretion to what was then the

²⁵ Anspach et al, *Maine Rejects Indeterminacy*, 1-7, 23-26 (1983); Barbara Krauth, *Parole: Controversial Component of the Criminal Justice System*, Observations on Parole: A Collection of Readings from Western Europe, Canada, and the United States, Association of Paroling Authorities International, 51 (1987).

²⁶ Krauth, *Parole*, 52 (1987).

²⁷ P.S.L. 1971, ch. 147.

²⁸ Maine Criminal Law Revision Commission, Preamble to Accompany Proposed Maine Criminal Code, 3 (1975). Accessible at: http://lldc.mainelegislature.org/Open/LDs/107/107-LD-0314_Preamble.pdf; for a full list of those who served on the Criminal Law Revision Commission, see Preamble to Criminal Code, 6-7 (1975).

²⁹ Preamble to Criminal Code, 4 (1975).

³⁰ *Id.*, at 3.

³¹ Anspach et al, *Maine Rejects Indeterminacy*, 23 (1983).

Department of Mental Health and Corrections, and setting limits on the amount of time a person could serve in prison before being released on parole.³² By contrast, the second model provided more authority to the judicial branch and replaced Maine's system of parole with the split sentencing regime that now exists in Maine,³³ empowering judges to issue sentences with "unsuspended" portions served in prison and "suspended" portions served on probation.

There were several factors that likely led the Revision Commission to recommend the split sentencing model to the Legislature along with the abolition of parole, addressed in numerous sources cited below.³⁴ A few of the major factors noted by commenters include: The nationwide movement away from indeterminate sentencing, which had been criticized for the lack of certainty it created, both for victims and those serving sentences;³⁵ The report of the 1974 Governor's Task Force on Corrections, that was largely critical of the Department of Mental Health and Correction's ability to effectuate rehabilitation for criminal offenders;³⁶ and, the increasing criticism of Maine's parole board for lacking transparency in its decision making.³⁷

One of the major changes included in the enactment of the Criminal Code was the establishment of the crime classes used in Maine today. As noted in the 1976 Maine Law Review article *Sentencing* by Melvyn Zarr:

"Under the pre-Code law, each crime carried its own penalty. This led to a situation where there were more than sixty distinctive sentencing provisions in the statutes. Since each sentencing provision represented an ad hoc judgment expressing the mood of the legislature at the time, the scheme of penalties reflected a lack of coherence. The Maine Criminal Code has set about to rectify this incoherence by establishing a classification system along the lines advanced by the Model Penal Code."³⁸

At the time the sentencing classifications were as follows:

- A. In the case of a Class A crime, the court shall set a definite period not to exceed 20 years;
- B. In the case of a Class B crime, the court shall set a definite period not to exceed 10 years;
- C. In the case of a Class C crime, the court shall set a definite period not to exceed 5 years;
- D. In the case of a Class D crime, the court shall set a definite period of less than one year;
- E. In the case of a Class E crime, the court shall set a definite period not to exceed 6 months.³⁹

³² *Id.*

³³ *Id.*; Preamble to Criminal Code, 4-5 (1975); *see also* Anspach et al, *Maine Rejects Indeterminacy*, 21-26 (1983) for an analysis of the different models considered by the subcommittee.

³⁴ Anspach et al, *Maine Rejects Indeterminacy*, 23-26 (1983).

³⁵ *Id.*, at 20; *see also* Donald F. Anspach and S. Henry Monsen, *Determinate Sentencing, Formal Rationality, and Khadi Justice in Maine. An Application of Weber's Typology*, *Journal of Criminal Justice* Vol. 17, 471 (1989).

³⁶ Anspach et al, *Maine Rejects Indeterminacy*, 24 (1983).

³⁷ *Id.* at 25; Anspach and Monsen, *Determinate Sentencing*, 473 (1989).

³⁸ Zarr, *Sentencing*, 118 (1976).

³⁹ 17-A M.R.S.A. §1252 (Supp. 1975).

Only two crimes were left outside of this classification system. First degree homicide, which carried a mandatory sentence of life imprisonment; and second degree homicide, which carried a mandatory sentence of not less than 20 years.⁴⁰

The Revision Commission's work eventually led to the establishment of the Criminal Code in 1976,⁴¹ which included a requirement that persons sentenced to imprisonment be confined for a definite period of time, rather than an indeterminate period. The preamble to the bill stated that release "will no longer depend on parole board decisions but on the willingness of the prisoner to earn the 'good time' deductions authorized by law."⁴² Under the new system, which was based on the approach in the Model Penal Code,⁴³ a judge issues a sentence deemed appropriate based on the class of the crime and the underlying facts. That sentence has a set length, and the only reduction of time served would be through earned "good time" credits outlined in statute.⁴⁴

This marked the end of parole in Maine for sentences issued after the effective date of that law, making Maine one of the first states in the nation to abolish parole.⁴⁵ However, parole remains for those sentenced prior to 1976.⁴⁶ It is governed by the provisions of Title 34-A, Chapter 5 and administered through the State Parole Board Rules and Policy.⁴⁷

Following Maine's abolition of parole and adoption of the reformed sentencing structure, many commenters have weighed in on the results of the new system and the efficacy of that system in achieving the goals stated by its proponents. Debates surrounding the levels of predictability and fairness, the efficacy of judicial discretion versus that of corrections officials,⁴⁸ and the amount of actual determinacy in Maine's criminal sentencing system have been especially prominent.⁴⁹ There has also been some level of debate surrounding the underlying assumptions about national public attitudes on parole in the time period during and immediately following its abolition in Maine.⁵⁰

E. Sentencing Post-Enactment of the Criminal Code

Following the enactment of the Criminal Code and the abolition of parole in Maine, there have been a number of attempts to revisit Maine's sentencing model and the availability of community supervision alternatives to probation. Criticisms regarding predictability in sentencing and the

⁴⁰ 17-A M.R.S.A. §1251 (Supp. 1975); *see also* Preamble to Criminal Code, 4 (1975).

⁴¹ P.L. 1975, ch. 499, passed in 1975, but became effective in 1976 under 17-A M.R.S.A. §1, sub-§2 (1976); *see also*, Maine Criminal Code Revision 1975-1976. Available at: <https://www.maine.gov/legis/lawlib/lldl/criminalcode/index.html>.

⁴² Preamble to Criminal Code, 5 (1975).

⁴³ Preamble to Criminal Code, 4 (1975).

⁴⁴ Anspach and Monsen, *Determinate Sentencing*, 472-473 (1989); *see also* Zarr, *Sentencing*, 143-147 (1976).

⁴⁵ Anspach et al, *Maine Rejects Indeterminacy*, iii, 23 (1983); Krauth, *Parole*, 52 (1987).

⁴⁶ 34-A M.R.S.A. §5801 (2022).

⁴⁷ 03-208 C.M.R. ch. 1 (2022). Accessible at: <https://www.maine.gov/sos/cec/rules/03/chaps03.htm>.

⁴⁸ Zarr, *Sentencing*, 135-136, footnote 68 (1976).

⁴⁹ Anspach et al, *Maine Rejects Indeterminacy*, 34-37 (1983); Anspach and Monsen, *Determinate Sentencing*, 473-485 (1989); *see also* Zarr, *Sentencing*, 118, 121, 143-147(1976).

⁵⁰ Krauth, *Parole*, 55-56 (1987).

amount of judicial discretion in Maine's system⁵¹ have led to a number of attempts at reform. One such attempt came from the Maine Sentencing Guidelines Commission, established by the 111th Legislature,⁵² which recommended that Maine implement advisory, rather than mandatory, sentencing guidelines.⁵³ The need for sentencing guidelines was a continuous topic of debate following the establishment of the Criminal Code, particularly in reference to the question of whether or not there was demographic disparity in sentences issued in Maine.⁵⁴

In 1988 during the 113th Legislature, the Joint Select Committee on Corrections, in its final report, discussed the perception that with 53% of sentences utilizing probation, it had become a replacement system for parole in Maine.⁵⁵ The committee noted in its report two concerns with this use of the split sentencing system:

"First, when judges sentence an offender to a split sentence, there is no control in the system which allows a determination of the offender's readiness for release. In some cases as much as five years pass before the probation term begins automatically, with no review. Secondly, since there is no policy standard for the use of the split sentence, the amount of time required on probation varies sharply among offenders and offense types."⁵⁶

Maine's current system for sentencing is codified in Title 17-A, Chapter 63, and is discussed in further detail in the following section on Maine's current system.

There have also been numerous attempts to reestablish parole in Maine. The first, in 1981 when "the perception of prison overcrowding led to a move, supported by corrections officials, to reinstate the parole board."⁵⁷ Commenters noted that "the bill was supported by advocates of determinacy because release decisions of the new parole board would be based on guidelines" but opponents argued that "reinstating parole would undermine a major objective of Maine's sentencing policy: the certainty of sentences would be reduced by increasing the diffusion of sentencing power."⁵⁸

Since 1981 and prior to the consideration of LD 842 by the 130th Legislature, the bill that ultimately created this commission, there have been at least five bills introduced to reinstate parole in Maine, many of which bear a similar structure to the original version of LD 842.⁵⁹

⁵¹ Anspach and Monsen, *Determinate Sentencing*, 473 (1989).

⁵² P.S.L. 1983, ch. 53.

⁵³ Final Report of the Maine Sentencing Guidelines Commission, established by P.S.L. 1983, ch. 53, 3 (1984).

⁵⁴ Anspach and Monsen, *Determinate Sentencing*, 474-475 (1989).

⁵⁵ Final Report of the 113th Legislature's Joint Select Committee on Corrections, 34 (1988). This report also noted that Maine's percentage of offenders on probation was 10% above the national average in 1988.

⁵⁶ Joint Select Committee on Corrections Report, 34 (1988).

⁵⁷ Anspach and Monsen, *Determinate Sentencing*, 474 (1989).

⁵⁸ *Id.*

⁵⁹ See "Timeline of Parole in Maine" in Appendix C for a list of bills introduced regarding parole; *see also* Appendix I for a chart of bills since 1976 that reference parole. Staff worked with the Law and Legislative

Concerns around prison overcrowding in Maine continued through the 1980s and eventually led to the establishment of the Maine Corrections Summit, in May 1991.⁶⁰ The summit was created in response to the confluence of the State's prison overcrowding crisis and a funding crisis that limited the State's ability to respond to it.⁶¹ The final report of the summit opened with the following "[t]he Maine Correctional System is in crisis. Prisoners are continuing to flow in. But money for facilities, staff, and programs is declining. As a result, facilities like the central Maine Pre-Release Center... are threatened with closure."⁶² The summit was held at the Augusta Civic Center on May 7, 1991, it met for one day and it included judges, district attorneys, corrections officials, legislators, police, and concerned citizens.⁶³ The recommendations in the final report of the summit included, in the short term, the expansion of alternatives to incarceration and that the State begin planning to reestablish parole.⁶⁴

The solution reached by the State was the creation of Maine's Supervised Community Confinement Program, established by Public Law 1991, Chapter 845, in the 115th Legislature. May 1991 articles from the Portland Press Herald and Bangor Daily News noted that the cost of monitoring individuals on supervised community confinement would be in the range of \$10-\$15 per day, instead of \$55 per day within a correctional facility, and provided the Department of Corrections with an effective means to address the issue of overcrowding.⁶⁵

F. Current Systems that Alter the Length or Manner in Which a Sentence is Served

As discussed above, Maine abolished parole in 1976 when it established the Criminal Code. While Maine continues to have statutes governing parole, and an active parole board, only those sentenced prior to the enactment of the Criminal Code are eligible for parole.⁶⁶ There are currently 11 people serving on parole, and 5 remaining who could theoretically become eligible, although 4 of those people are serving consecutive sentences.⁶⁷ Maine's system of parole is governed by Title 34-A, Chapter 5, subchapter 5. Parole generally becomes available after the expiration of half a person's sentence, or at the expiration of a 15 year term in cases of life imprisonment.⁶⁸ The term and conditions of parole are set by the parole board established under Title 34-A, subchapter 2.⁶⁹ Supervision of persons on parole is administered by probation officers under the Department of Corrections. Probation officers and caseworkers provide input

Reference Library to identify legislative proposals regarding parole, the list provided is a list of bills that staff identified. There may be additional proposals not covered in this document.

⁶⁰ Final Report of the Maine Corrections Summit, 1 (1991).

⁶¹ See news clippings in Appendix G.

⁶² Final Report of the Maine Corrections Summit, 1 (1991).

⁶³ *Id.*

⁶⁴ Final Report of the Maine Corrections Summit, 2-3 (1991).

⁶⁵ Appendix G.

⁶⁶ See LD 842. Appendix J.

⁶⁷ Testimony from Richard Harburger at third commission meeting is available at: [Maine Legislature Video Archive, SH 437, 10-14-22.](#)

⁶⁸ 34-A MRSA §5803 (2022).

⁶⁹ 34-A MRSA §5802 (2022).

in the parole hearing process, but the outcome is ultimately left up to the parole board. Maine's current parole board is made up of five members, appointed by the Governor, they are required to be citizens of the state and "have special training or experience in law, sociology, psychology or related branches of social science."⁷⁰

i. An Overview of Sentencing in Maine

Maine's current sentencing system is codified in Title 17-A, Chapter 63, with the basic procedure set forth in §1602, sub-§1, as follows:

"1. Class A, Class B or Class C crimes. In imposing a sentencing alternative pursuant to section 1502 that includes a term of imprisonment for a Class A, Class B or Class C crime, in setting the appropriate length of that term as well as any unsuspended portion of that term accompanied by a period of probation or administrative release, the court shall employ the following 3-step process.

A. First, the court shall determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual.

B. Second, the court shall determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case. Relevant sentencing factors include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest.

C. Third, the court shall determine what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension."

The process set forth in §1602, sub-§1, is the codification of the sentencing process determined by the Supreme Judicial Court of Maine in the seminal case *State v. Hewey*,⁷¹ and operates alongside the other provisions of Title 17-A, Chapter 63 to govern criminal sentencing in Maine.

Maine's current classification system defining maximum terms of imprisonment is outlined in Title 17-A §1604 as follows:

A. In the case of a Class A crime, 30 years;

B. In the case of a Class B crime, 10 years;

⁷⁰ 34-A MRSA §5202 (2022).

⁷¹ *State v. Hewey*, 622 A.2d 1151, 1154-1155 (1993).

- C. In the case of a Class C crime, 5 years;
- D. In the case of a Class D crime, less than one year; or
- E. In the case of a Class E crime, 6 months.⁷²

The crime of murder is not included within this classification system. Murder is addressed separately under §1603, which requires that a “person convicted of the crime of murder must be sentenced to imprisonment for life or for any term of years that is not less than 25.” That provision also includes sentencing considerations regarding domestic violence, the victim's age, and pregnancy status, and includes requirements regarding specificity in sentence length.

However, the process described in §1602 and the maximum terms set forth in §1604, sub-§1 are merely starting points, as additional subsections in §1604 describe mandatory minimums for specific sentences, circumstances that elevate the class of a crime, and special weight for aggravating factors. Title 17-A, Chapter 63, also contains provisions governing other aspects of sentencing including, but not limited to, imprisonment for the crime of murder, how to handle concurrent and consecutive sentences, and a prohibition on imprisonment for failure to pay a fine.

A wide range of authorized sentences and sentencing alternatives is provided under Title 17-A, Chapter 61. Among those sentencing alternatives is the option to impose a suspended term of imprisonment with probation, or a split sentence of imprisonment with probation.⁷³ Probation is established under Title 17-A §1807 and is one key component of the split sentencing model referenced above. For split sentences, time that must be served in a correctional facility is referred to as the unsuspended portion of the sentence, and time served on probation is referred to as the suspended portion of the sentence.⁷⁴ The length of each portion of the sentence is determined by the court at the sentencing stage.⁷⁵ While on probation, a person may serve their remaining sentence outside of a correctional facility, subject to any number of specific conditions, outlined in §1807, sub-§2, which are determined by the court at the sentencing stage. If a person violates any of the conditions of probation, that person can be required to serve the remainder of their sentence in a correctional facility.⁷⁶

Maine currently has two primary post-conviction mechanisms that either shorten the amount of time served or change the manner in which a sentence is served: earned time deductions; and the Supervised Community Confinement Program.

⁷² 17-A M.R.S.A. §1604, sub-§1 (2022).

⁷³ 17-A M.R.S.A. §1502 (2022).

⁷⁴ 17-A M.R.S.A. Chapter 67 (2022).

⁷⁵ *Id.*

⁷⁶ *Id.*

ii. Statutory Deductions from Sentences

Under Maine's current system, once a person has received a sentence the only mechanism for adjusting the length of the sentence outside the of the judicial process is through sentence deductions outlined in statute. The most commonly discussed way this happens is through what are referred to as "good-time" deductions, which are outlined in statute under Title 17-A, chapter 81. There are three separate codes that are applicable based on when a sentenced was issued. The 1983 code is located under 17-A §2310, the 1995 code is under 17-A §2309, and the 2004 code is under 17-A §2307-2308. The specifics of how each code is applied are outlined in the Department of Corrections' presentation in Appendix D. Those serving life sentences are not eligible for good-time deductions.

There are also other applicable deductions available in Chapter 81, such as deductions for time detained while awaiting trial under §2305 and certain special circumstances outlined in §2306. Good time deductions are applied based on a resident's good behavior. The criteria for good behavior include, but are not limited to: engaging in work, participation in vocational programing, receiving education and consistently exemplifying compliance with rules.⁷⁷ Good time is calculated based on the unsuspended portions of a sentence only.⁷⁸

iii. Supervised Community Confinement Program

Community supervision is a general term used to refer to different programs offered by jurisdictions for persons to serve their sentences outside the confinements of a corrections facility. The National Conference of State Legislatures has a number of useful resources regarding community supervision, which includes a database of significant enactments across the United States.⁷⁹ Maine currently has two primary community supervision mechanisms: probation and supervised community confinement.

The Supervised Community Confinement Program (SCCP) is administered by the Department of Corrections, and is meant to provide a means of successful reentry of adult facility residents into the community. Residents transferred to the program are still considered to be in the legal custody of the Department, but they are able to serve the remainder of their sentences at an approved residence, rather than in a department facility. SCCP is administered at the discretion of the Department of Corrections, pursuant to its statutory authority under Title 17-A §3036-A and its program rule.⁸⁰ Participation in the program is a privilege which may be afforded to residents who meet the eligibility criteria including, but not limited to: being classified as minimum or community custody (low-risk status); no discipline within the last 90 days; and

⁷⁷ Department of Corrections Presentation Slides and Handouts. Appendix M.

⁷⁸ *Id.*

⁷⁹ See "Information Requests" in Appendix C.

⁸⁰ See Appendix D.

satisfactory participation in programs offered by the department.⁸¹ Residents are responsible for working with their case manager to develop and submit an individualized plan for their participation in the program.⁸²

There are also baseline criteria for the remaining time on a person's sentence in order to qualify for the program. A person must have no more than 30 months remaining on their sentence after deductions are made for good time.⁸³ If a resident is sentenced to a period of 5 years or less, that person must have served at least half of their sentence after deductions are made for good time.⁸⁴ If a resident is sentenced to a period of more than 5 years, that person must have served at least two thirds of their sentence after deductions are made for good time.⁸⁵

Finally, in order to be approved for SCCP there are a number of behavioral and programmatic considerations. A resident must at have:

- The ability to abide by mandatory conditions and expectations of conduct;
- The ability to abide by expectations related to work, education, or rehabilitation as dictated in the resident's case plan;
- Demonstrated change in behavior toward evident rehabilitation; and
- Examples of personal and service-oriented accomplishments (tutoring, mentoring, service to facility, others).
- A completed review of victim sentiment, conducted by the Department of Corrections (strong oppositional victim sentiment doesn't automatically preclude approval, but it is taken into consideration).

Residents transferred to SCCP are placed in suitable locations, approved by the department, such as a treatment facility, support oriented transitional home (for persons in recovery, or veterans, etc.), housing associated with an employer or educational program, nursing facility or other hospital-type care setting.⁸⁶ Similar to probation, a person who is serving the remainder of their sentence outside of a correctional facility while on SCCP are subject to a number of restrictions, that can also include any of the restrictions applicable under probation.⁸⁷ A person who violates the conditions of their enrollment in the program can be transferred back to a correctional facility for the remainder of their sentence.

⁸¹ *Id.*

⁸² See Department of Corrections Presentation Slides and Handouts; *see also* 03-201 C.M.R. ch. 27.2 (2022). Accessible at: <https://www.maine.gov/sos/cec/rules/03/chaps03.htm>.

⁸³ See Appendix D.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Department of Corrections; *Brief on Supervised Community Confinement* (2022). Appendix J.

⁸⁷ *Id.*; *see also* 03-201 C.M.R. ch. 27.2 (2022). Accessible at: <https://www.maine.gov/sos/cec/rules/03/chaps03.htm>.

