

MAINE STATE PRISON BRANCH OF THE



N.A.A.C.P.



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Testimony to support LD 178, An Act Support Reentry and Reintegration into the Community

- According to Black's Law Dictionary (11th ed. 2019) the term Indeterminate sentencing relates to: "The practice of not imposing a definite term of confinement, but instead prescribing a range for the minimum and maximum term, leaving the precise term to be fixed in some other way, usually based on the prisoner's conduct and apparent rehabilitation while incarcerated."

The difference between determinate and indeterminate sentencing lies in the amount of time a convicted individual will spend in prison.

Determinate sentencing refers to a fixed term of imprisonment that is set by a judge, and the individual must serve the entire sentence. For example, if someone is sentenced to 10 years in prison, they will serve the entire 10 years, minus any time off for good behavior or other factors.

On the other hand, indeterminate sentencing refers to a flexible term of imprisonment that is not fixed but rather depends on the individual's behavior and rehabilitation progress. In some cases, indeterminate sentencing may involve a hearing before a parole board, which will decide whether or not to release the individual from prison based on their behavior and rehabilitation progress. Indeterminate sentencing is typically used in cases where **rehabilitation is a primary goal**, rather than punishment alone.

In 1953, legislature passed a succession of amendments that extended parole to lifers after serving 30 years of imprisonment and granting the Parole Board with discretionary authority to allow for the discharge of a lifer after successfully completing 10-years of parole. The Law Court held "even if the application of the 10-year discharge provision to Gilbert would be unconstitutional, the Parole Board is not for that reason barred from granting Gilbert parole...because the inherent differences between parole and commutation, a grant of parole to Gilbert on the authority of amendment passed after his conviction **would not amount to commutation of sentence** in violation of the constitutional demands of the separation of powers." The high Court went on to state in Gilbert that "**Parole... is a legislative program of rehabilitation and restoration of persons convicted of crime to useful membership in society.** The purpose of the law is to offer the institutionalized convict the opportunity to make good on his own outside the prison walls but under the immediate supervision of the probation-parole officer..."

According to American Jurisprudence, Second Edition February 2023 Update "The essence of parole is release from prison, before completion of the sentence, on condition that the prisoner abide by certain rules during the **balance of the sentence**. Otherwise stated, parole is the conditional release from imprisonment that entitles the parolee to **serve the remainder** of his or her term outside the confines of an institution if the parolee

satisfactorily complies with all the terms and conditions provided in the parole order. The purpose of parole is to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed, and alleviate the cost to society of keeping the individual in prison.” Maine Parole follows a term of imprisonment, it does not shorten it.

- AG Frey stated: “Historically, parole was used in Maine to release convicted offenders from incarceration at a time when offenders received indeterminate sentences.”

This is misleading. People are still sentenced to indeterminate sentences by the rationale that AG Frey uses. Individuals who are residing at Bolduc Correction Facility or those who are out on the Ankle Bracelet program, and those who are on SCCP are released to the community for work, school, etc. which is outside the walls of a facility.

- AG Frey stated: “The approach minimized the role of judges sentencing, invested the parole board with significant authority on the ‘back end’ of sentencing to determine the length of time actually served, and undermined public confidence in a system where sentences imposed could bear little relation to the sentence actually served.”

We disagree. The truth is that the parole board does not release individuals from serving their sentence. They must serve the entirety of their sentence. Someone on parole earns no “Good Time” or “Earned Time” when they are out on parole meaning that they will serve every day that they are sentenced to where as an individual who serves out their time incarcerated will earn “Good Time” and/or “Earned Time” and will be released from their confinement “Early” and if that individual happens to be convicted of Murder that person leaves early and without any release supervision, as a conviction of Murder does not allow for probation.

- AG Frey used the case of Fernald v. Maine State Parole to contest that parole could not be instituted in the future.

We disagree. The institution of parole was ended as the case states. However, the case does not state in any way that had parole been reinstated Mr. Fernald would not be eligible. Furthermore, AG Frey made an ambiguous statement to legislatures, when he stated the “bill overlaps with the Governor’s clemency authority and thus implicates the separation of powers clause of the Maine Constitution” citing Gilbert v. State to support his assertion. In fact, in Gilbert v. State, Mr. Gilbert was granted parole several times between 1969 and 1973, after receiving a mandatory life sentence in 1951. The law court declared “holding that parole, without discharge, of a lifer pursuant to a parole statute enacted subsequent to his sentencing does not constitute an unconstitutional encroachment on the Governor’s exclusive power to commutation.” The high court went on to add, “Because of the inherent difference between parole and commutation, a grant of parole to Gilbert on the authority of amendments passed after his conviction would not amount to a commutation of his sentence in violation of the constitutional demands of separation of powers.” It’s important to note the Law Court vacated the judgement handed down by the Superior Court (Cumberland County).

Also, in Bossie v. State AG Frey made the following statement, the parole “bill authorizes the parole board to shorten, reduce or discharge a convicted offender before the natural expiration of a criminal sentence.” This is on its face not accurate. The parole bill only allows for the parole board to decide that an individual may be a low enough threat to the community to complete the entire remainder of their sentence (not including “Good Time/Earned Time”) under the supervision of an officer of the Department of Corrections (Probation/Parole Officer).

- AG Frey stated: “Determinate sentencing also ensures that victims of crime and other stakeholders in the criminal justice system, including law enforcement, attorneys, the court, and the offender, have an accurate understanding about the length of a sentence.”

We respectfully disagree. Under the multitude of “Good Time” statutes three people sentenced to 30 years under three different statutes will get out at drastically different times. A man under the 1995 Good time bill will serve 25.5 years where as someone sentenced under the 2004 Good time bill could serve 21 years and someone sentenced under the 1983 Good time bill would serve around 18 years. With no consistency in actual time served there is no way to say that anyone can have an accurate understanding of the length of a sentence.

- AG Frey stated: “For over 30 years, the Legislature has enshrined in the criminal process four commitments to crime victims: the right to prior notice of hearings and court events, the definitive right to be heard, the right to notice of the final outcome, and truth in sentencing. This legislation does not live up to these four commitments.”

We respectfully disagree. During the Parole Hearing process, the victim and family will be notified and we want them to be heard. Their voice will be an important part of the process. They also will get notice of the outcome of the Hearing (if this is not in the bill it needs to be). Lastly, they will know the exact amount of time that the individual was sentenced to will be served so long as the individual completes parole without any technical violations (as over the past 25 years the only parole violations have been technical in nature). This is the definition of truth in sentencing.

The MSP NAACP would like to see a portion of the Parole bill extend the rights of victims to include Truth in Reconciliation. This would allow the victims the opportunity to come to the table with perpetrators of crimes and have frank conversations about how crime has impacted them and give victims a chance to face perpetrators in a safe and controlled environment. It is the belief of the MSP NAACP board that this would allow for healing of both the victim and the perpetrator which is need in each of their lives.

Maine already has parole. There are over 300 people from other states on parole in Maine (not including federal parole). Why should people from other states enjoy our parole system while Maine’s prisons are too full and the length of sentences has been increasing. It is unbelievable that Maine would allow other states Parolees to enter our state and keep our own residents out of the parole system which these out of staters enjoy. There are even people incarcerated in this facility from other states that have the possibility of parole. **They are using the programs within our system to prove that they are rehabilitated and being released on parole.** This fundamentally violates the Equal Protection Clause of the U.S. and Maine’s constitutions, as well as the 1965 Discrimination Act. When a man who comes to our prison system form out of state has a maximum sentence of 50 years and goes home on parole in 20 or 25 years to enjoy our state from the outside that is simply unfair and unjust.

We believe that having counsel available for the hearing is not necessary. However, there may be a way to partner with the University of Maine system to create an intern service for individuals working towards becoming lawyers to get some real-life experience helping people prepare before going in front of the parole board as legal assistants/paralegals at the same time they would be learning public policy and law as applied. However, when it comes to appealing parole decisions (denials, violations etc.) there should be legal representation as is the case in the rest of New England. Maine Counsel of Indigent Legal Services (MCILS) can approve funding for a lawyer if a lawyer is necessary.