

**TO: Judiciary Committee Analysts Elias Murphy and Janet Stocco**

**FR: Laura Yustak, CLAC Chair**

**RE: Notes from CLAC Discussion of LD 1941, compiled by Committee Analyst Murphy and CLAC Chair Yustak**

**DA: January 3, 2026**

**Note: Establishing a parole system is a complex undertaking, and these notes do not constitute an exhaustive list of all relevant issues.**

### **Policy Considerations**

If parole is instituted, is Maine going to return to indeterminant sentencing (pre-Code, sentencing range)?

Is there a need or a policy that is not being met with the current statutes and programs? What are the current systems doing that parole would change or add to or fix?

Who cannot benefit from SCCP now?

    Data re denials – how many, what are the grounds?

    Who is not eligible for SCCP, and are the reasons for ineligibility supported by appropriate policy?

How does parole affect sentencing jurisprudence that has developed in caselaw and in the Criminal Code (e.g., Hewey analysis, gateway factors for life sentences; circumstances under which consecutive sentences may be imposed)?

Should any crimes be excluded from consideration for parole?

Should crimes committed while on parole be eligible for parole?

Should persons with multiple convictions be eligible for parole? What are the parameters?

Should life sentences be eligible for parole? If so, all life sentences or only some? How and by whom is that determined – sentencing court? What criteria should determine whether a life sentence is eligible for parole? Should those be in statute? Can a life sentence imposed by a court w/o parole be subsequently determined to be eligible for parole by the Legislature or PB? (Probably not; that changes the sentence and is effectively a commutation.)

Can the court take potential parole eligibility into consideration in imposing sentence? At what step?

Should a parole system operate at the same time as SCCP, or should SCCP be repealed?

If parole provides incentive, should good-time be reassessed? Do they serve different purposes? Should there be good-time for persons who also have parole eligibility?

How is subsequent parole eligibility affected if an individual commits a new crime while on parole?

What are appropriate measures for recidivism, and within what period of time – arrest, conviction, violation of a condition of parole or probation?

What should the standard of proof be for revocation? Probation violations require a preponderance of the evidence. Why is the proposal clear and convincing? What policy purpose is being served by this decision? Who should have the authority to arrest for violations of parole, and who should have authority to issue warrants and requests to detain (and why)?

The proposal allows for appeal after denial of parole. Should the State have the right to appeal the grant of parole or parole conditions?

Why is there a presumption that sentence for a new crime while on parole be served concurrently with the sentence imposed on the prior crime? Should this be added to 17-A MRS 1608 as e.g. of when consecutive sentences are appropriate?

Should parole apply prospectively only? Apart from any legal considerations, is it appropriate to apply parole to sentences that were imposed by a court applying sentencing standards that did not include parole eligibility?

### **Logistics/Structure/Administration**

Are Parole Board members full-time employees?

How is the Parole Board staffed? Legal, admin, investigative, forensic psychologist, victim advocate?

Who provides legal advice to the Parole Board and represents the Board if a decision is appealed?

Who provides forensic expertise to the Parole Board to develop risk assessment criteria and identify appropriate risk assessment tools? Should the legislation determine that “actuarial evidence based risk assessment” be the “central factor” in the parole decision? Are there tools that are validated for all crimes? What is the role that forensic experts play in risk assessment? Will the Board have the statistical and forensic expertise to “reevaluate the predictive accuracy of the actuarial evidence-based risk assessment”?

Does the Board have subpoena or investigative authority?

Who can be present and who has the right to address or provide input to the Parole Board? To what extent should Parole Board solicit input from these parties?

Victim, prosecutor, community, defense counsel, sentencing judge?

Is the prosecutor a party?

Public Access. Are hearings public? Is the recording a public record? Are confidentiality provisions required? For what records or information? Video recording creates privacy concerns for all parties, especially victims and survivors. How are victim statements to be maintained?

### **Integration with Existing Systems**

Do probation and parole run separately (e.g., complete parole, then enter into probation for duration of suspended sentence)?

How does grant or denial of SCCP affect parole eligibility/ decisions (and vice versa)?

Bail Code amendments?

Victim rights amendments?

How does a parole system affect sentencing, both established caselaw and statutory requirements? Should aggravating and mitigating factors and factors related to suspension of activated jailtime be reevaluated in light of parole?

How will parole decisions and parole conditions be communicated to the court, to SBI and to law enforcement? How will parole data be maintained? Will law enforcement be able to confirm parole status and conditions 24/7?

Will the SJC need to make changes to any of its Rules (Criminal, Civil, Electronic Court Systems, Evidence, Appellate)?

### **Specific Questions about LD 1941**

Requirement of certified domestic violence intervention program—Is it accurate that this is not available within DOC? Program would have to be established.

Recidivism measures—Why 3 years?

Why is authority to arrest/detain limited to violations that result in a “direct threat to public safety,” as opposed to any arrestable offense or “non-technical” violation? A person on parole remains in legal custody, so why is there a presumption of release within one business day if there is no warrant? (Compare 48-hour probable cause requirement under M.R.U.Crim.P. 4A for warrantless arrests.)

Grant of arrest warrant authority to Commissioner—policy reason? Currently a judicial officer can issue arrest warrant (judge, clerk, justice of the peace). Probation officers make requests of the court, just like a patrol officer would, and the judicial officer approves the request or not.

Can bail be set for someone charged with parole violation? Person w/pending probation violation can be subject to bail conditions.

Officers cannot immediately see if someone is on probation when they run a name; same would be true of parole?

Standard of proof required for revocation is clear and convincing evidence. Why?

Who would the other party be? Who presents the case—parole officer? Prosecutor?

Does this law repeal all of the parole statutes that are currently on the books?

Proportionality of eligibility (for example all victims being 25 years of age (§5824). What is the rationale for that?

What is the rationale for limiting the consequence for violating parole (requirement to impose least restrictive sanction)?

Does good time reduce the time a person is on parole, as well as the incarcerative portion of the sentence?

Should parolee have obligation to disclose parole status to LE if stopped?

### **Historical information that may inform policy decisions**

After parole was repealed, what were the good time statutes before SCCP was enacted.

- a. Deductions go back as far as 1976, which was when parole was repealed.
- b. Were the first good time statutes enacted when parole was repealed?
- c. When parole was phased out, why, and what has replaced it?
  - i. Maine currently has good time, earned time and SCCP
  - ii. How would those current programs interact and would they function alongside parole? Is this duplication?

### **Suggestions**

Cross-reference existing statutory definition of victim in Criminal Code or victims rights statutes rather than creating a new more limited definition of “victim.”

Confirm whether amendments to Bail Code and victims rights statutes are required.

Compare presumption of concurrent sentences in this proposal to 17-A MRS §1608 (when consecutive sentences are appropriate).

Clarify intent of Duration of parole, §5823. "Unsuspended portion of sentence less deductions..." ?

There are provisions of the probation statute that allows for a revocation for conduct that occurs during the unsuspended portion of the sentence. Would this create two proceedings at the same time (revocation of parole/effect on probation)?

If individual is sentenced to 10 all but 6, eligible for parole after 2 years (under 5824), but are all of concurrent sentences combined/added? Needs to clarify the intent. Does it mean that if there is a shorter sentence and a longer sentence, use the longer sentence?

Are parole officers distinct from probation officers? What is their training? Are they law enforcement or corrections officers? Extent of authority? Same as current probation officers? Parole was supervised by probation officers for the few cases remaining in recent past.

#### **Other**

Should the Committee explore whether there are legal issues with retroactivity in addition to the policy issues? Review separation of powers caselaw. Person remains in DOC custody; DOC is determining how sentence is served. Is analysis different if life sentences are retroactively eligible for parole?