

Luca Mellon

LD 1941: An Act To Implement Recommendations of Commission to Examine Reestablishing Parole  
In support

Senator Carney, Representative Kuhn and Honorable Members of the Joint Standing Committee On  
Judiciary,

I'd like to share some historical context around Maine's relationship to parole because I believe these elements of the context are no longer relevant, and our system is no longer coherent without parole. I will share some quotes by people describing what was going on at the time to show that Maine's parole officers and parole board were both inadequately prepared to do their jobs well, Maine's prison wasn't able to rehabilitate people effectively, and the new code did include measures that would allow a judge to easily reconsider a sentence, which have since been repealed.

### **Maine's probation & parole had problems**

- Maine's Attorney General Joseph E Brennan: parole has proven ineffective in Maine<sup>1</sup>
- A white paper report<sup>2</sup> from the year 1970 describes issues around training and qualification for parole and probation officers.
  - "Too few of the probation-parole officers of Maine have had the advantages of a college education..Qualification standards have been set but they frequently are not adhered to in selecting officers."
- This report also recommended that probation and parole officers needed instruction in how to supervise people on the outside (44), and that they weren't "making full use of the community resources available to assist their probationers and parolees" (8).

### **Maine's parole board had problems**

- The board consisted of three part-time members, one of whom was ex-officio, and two of whom didn't have relevant prior experience or education. "Their interviews with offenders, however, were brief and strained. Little effort was made to motivate inmates to take advantage of training opportunities at the Center."<sup>3</sup>
- Parole boards use "arbitrary and variable standards for setting release dates." "The correction system in most states is corrupted because human whims and subjective standards are used to determine who gets imprisoned and how long he stays...inmates react to arbitrary sentencing by either violent uprisings or by 'conning' parole boards into believing they are rehabilitated."<sup>4</sup>

### **New Criminal Code 1975: punitive but reviewable**

- Maine's legislature established the Criminal Law Revision Commission in 1971 *in response to liberal prison reform programs*. The move towards determinacy was a **move away from rehabilitation**. Rehabilitative programs at the time were criticized for being ineffective and/or a

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1 "Maine rewrites criminal code - no parole" published in The Weekly Scene on June 6th, 1976, available on JSTOR.

2 Chappel, Richard A.; Davis, Henry J.; and Clendenen, Richard, "Observations on the Juvenile and Adult Correctional Programs of the State of Maine" (1970). *Corrections Documents*. Paper 25.

3 Chappel, Richard A.; Davis, Henry J.; and Clendenen, Richard, "Observations on the Juvenile and Adult Correctional Programs of the State of Maine" (1970). *Corrections Documents*. Paper 25, page 10.

4 Dr. David Fogel, former Minnesota Corrections Commissioner, considered the "father of determinacy." Quoted in newspaper The Weekly Scene, "New penal program sharply debated", October 24, 1975, available on JSTOR.

sham, and many were eliminated. When Connecticut considered following Maine's lead in 1980, they noted that "the purpose of prison is punishment, not rehabilitation."<sup>5</sup>

- The model proposed by former Minnesota Corrections Commissioner David Fogel, the father of determinate sentencing, recommended that sentences should be reviewable. sentences should be reviewable.<sup>6</sup>
- MRS 17A-A §1154 (enacted 1975, repealed 1981) was titled "sentences in excess of one year deemed tentative" and allowed a judge to **revise a sentence** if they found that they had misunderstood the person's "history, character, or physical or mental condition". In 1981 this statute was replaced by MRS 17-A §1255, which allowed for the Department of Corrections to file a petition for resentencing with the courts if they believed there was a similar misapprehension regarding the person in their custody. A judge could dismiss or grant the petition, and granting could only reduce the sentence, not enlarge it. In 1982 Maine's Supreme Court struck this statute down for granting the governor's commutation powers to the courts.<sup>7</sup>

### What did stakeholders notice without parole?

- Connecticut's parole board chair examined Maine's model after having abolished parole and noticed that it resulted in dropped enrollment in programming. "There's no incentive for a prisoner in a system like that. You're' just warehousing people."<sup>8</sup>
- "The advent of determinate sentencing and the abolition of parole presented the likelihood of longer sentences involving substantially more actual confinement."<sup>9</sup>
- According to Maine's Attorney General James Tierney, "The Maine experience is that although we certainly solved the problem of too early releases by a too liberal parole board, we did it at a tremendous cost by eliminating needed flexibility in a system which requires it if true justice is to prevail." The new system "once again lacks the flexibility needed to deal with individual cases from a correctional perspective."<sup>10</sup>
- "Given Maine's determinant sentencing structure and the requirement under Truth In Sentencing Law that inmates serve 85 percent of their sentence, institutional behavior is expected to have little impact on the time served by the inmate."<sup>11</sup>

The conditions that prevailed when we abolished parole are no longer a reality. Probation relied on index cards up until 1997, but the DOC today is well-functioning. This bill's parole board would have the support, training, and qualifications necessary to do their job well. The resentencing statute that was meant to accompany the removal of parole could be considered similar to post-conviction review, but I don't think Mainers are really ever granted post-conviction review. Finally, we pride ourselves on our rehabilitative correctional model now, which is aligned with *functional* indeterminate sentencing, rather than determinate sentencing. A parole-less system feels like an anachronism in light of Maine's Model of Corrections. I urge you to vote ought to pass on LD 1941.

5 "Connecticut legislature is considering abolishing parole after Maine", published in New View, April 11, 1980, available on JSTOR.

6 <https://www.ojp.gov/ncjrs/virtual-library/abstracts/testimony-david-fogel-research-criminal-sentencing-1978-see-ncj> Testimony provided by Dr. David Fogel on May 18, 1978 to US Congress

7 State of Maine v. Gary Hunter, 447 A.2d 797, 1982

8 "Connecticut legislature is considering abolishing parole after Maine", published in New View, April 11, 1980, available on JSTOR.

9 dissenting opinion of Justice Wathen in State of Maine v. Gary Hunger, 447 A.2d 797, 1982

10 "Maine's attorney general urges flexible parole policy" by T. J. Tremble in the Bangor Daily News, August 14, 1984.

11 State of Maine, Maine Department of Corrections, Corrections Master Plan : Final Report (1998) Pulitzer / Bogard & Associates