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April 22, 2021

Hon. Anne Carney
Hon. Thom Harnett
Joint Standing Committee on Judiciary
State House, Room 438
Augusta, Maine 04332

Re: LD 842, *An Act to Reestablish Parole*

Dear Senator Carney and Representative Harnett:

I am writing to share our perspective on LD 842, *An Act to Reestablish Parole*, and to express opposition to the legislation.

First, I want to start with some background information about parole. Historically, parole was used in Maine to release convicted offenders from incarceration at a time when offenders received indeterminate sentences. Indeterminate sentences were sentences that were in the form of a range of jail or prison time. For example, under this sentencing scheme, an individual convicted of a crime could receive a sentence of one to three years of incarceration. Indeterminate sentences were uncertain and unpredictable. The approach minimized the role of judges in 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 the sentence imposed could bear little relation to the sentence actually served.

Given these issues and other concerns with this sentencing framework, parole was abolished in many states as part of a national movement towards "determinate" (or fixed term) sentencing. In 1976, parole was abolished in Maine. *See Fernald v. Maine State Parole Bd.*, 447 A.2d 1236, 1238 (Me. 1982) (holding that "the Criminal Code abolished the institution of parole except as applied to prisoners sentenced prior to the Code's effective date" of May 1, 1976). Currently, very few persons remain subject to parole, given that only those in the custody of the Department of Corrections pursuant to a sentence imposed on a crime subject to the law in effect prior to May 1, 1976, remain eligible for parole.

Determinate sentencing is an approach under which a judge imposes a sentence for a set or certain amount of jail or prison time. It has been labeled "truth in sentencing" because it leads to greater predictability in sentencing, strengthens the integrity of criminal sentencing, and helps to eliminate inconsistencies and uncertainty about how much time an individual will actually serve in jail or prison. 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.

Second, I would like to address some concerns with this bill.

LD 842 would vastly expand eligibility for parole in Maine. Under LD 842, individuals who receive a life sentence or any term not less than 25 years are eligible for parole once they serve at least 20 years of that sentence. Additionally, all individuals whose sentences are at least one year would be eligible for parole once they serve not less than half of the sentence or half of the most recent sentence imposed by the court. This would mean that an individual sentenced to a year in prison would be eligible for parole after serving six months of that sentence, less any "good time" sentencing deductions. *See* 17-A M.R.S. §§ 2307 et seq.

LD 842 also presents legal and constitutional issues to the extent the bill seeks to expand parole eligibility retroactively (to those who were sentenced before the effective date of the legislation or who are alleged to have committed a crime before the effective date). *See Bossie v. State*, 488 A.2d 477, 479-80 (Me. 1985) (striking down a sentencing statute as unconstitutional where the statute increased "good time" deductions available to inmates committed to custody before its effective date). To the extent the bill authorizes the parole board to shorten, reduce, or discharge a convicted offender before the natural expiration of a criminal sentence, the bill overlaps with the Governor's clemency authority and thus implicates the separation of powers clause of the Maine Constitution. *See Gilbert v. State*, 505 A.2d 1326, 1328 (Me. 1986) (holding a parole law unconstitutional because it provided the parole board with discretionary authority to fully discharge a life sentence after the parolee successfully completed 10 years of parole).

The Committee may wish to address some of the practical issues associated with implementing parole that are not addressed by the bill. These include:

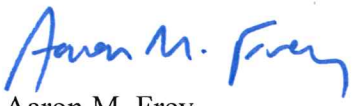
1. LD 842 provides that an individual seeking parole must be represented by counsel, but it does not address funding. Currently, individuals subject to parole have no statutory right to counsel before the board.
2. If parole is denied, the bill requires that the parole board review the matter again in 2 years. In contrast, current rules for parole provide that the parole board may establish a date when the person can be reconsidered for parole depending on the specific circumstances of the matter before it.
3. LD 842 provides that a person denied parole may appeal the denial within 90 days, but it does not identify the process or forum.

Finally, reestablishing parole will have a significant impact on victims and surviving family members of homicide victims. Whenever an individual is eligible for parole, the parole board conducts a hearing where victims relive the trauma of the crime with limited certainty or finality

in the proceeding. Additionally, parole proceedings often leave victims and surviving family members with uncertainty about when the offender will actually be released from incarceration.

I am happy to answer any questions that you may have and will be available for the work session on this bill.

Sincerely,



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