

**KATHRYN SLATTERY**  
DISTRICT I

**JACQUELINE SARTORIS**  
DISTRICT II

**NEIL MCLEAN**  
DISTRICT III

**MAEGHAN MALONEY**  
DISTRICT IV



**R. CHRISTOPHER ALMY**  
DISTRICT V

**NATASHA IRVING**  
DISTRICT VI

**ROBERT GRANGER**  
DISTRICT VII

**TODD R. COLLINS**  
DISTRICT VIII

**MAINE PROSECUTORS ASSOCIATION**  
**SHIRA BURNS, EXECUTIVE DIRECTOR**

**“An Act to Implement Recommendations of the Commission to Examine Reestablishing Parole”**  
**Before the Joint Standing Committee on Judiciary**  
**Public Hearing Date: January 8, 2026**  
**Testimony Neither For Nor Against LD 1941**

Senator Carney, Representative Kuhn and members of the Joint Standing Committee on Judiciary. My name is Shira Buns, I represent the Maine Prosecutors Association and I am here to testify neither for nor against LD 1941.

The testimony is neither for nor against as some of our elected district attorneys are not against the premise of parole. However, this bill does not adequately address issues brought up by the Maine Coalition to End Domestic Violence at the informational session in which the Maine Prosecutors Association wholly agree with. This bill also does not address the criminal code and the actual implementation of parole in sentencing. Our current sentencing structure, based on both caselaw and statute, are determinative sentences. Attached is a memo regarding the timeline of parole in Maine that shows when Maine established the criminal code it included a requirement that persons sentenced to imprisonment for a determinative amount of time.

Pursuant to our current sentencing structure, multiple steps must be taken when determining a sentence for a Class C or higher crime. The three-step process is outlined in cases such as *State v. Hewey*, 622 A.2d 1151 (Me. 1993), codified in 17-A M.R.S. § 1602, and is mostly referred to as the *Hewey* analysis. If the Court orders a sentence of imprisonment to be consecutive, the Court must do an additional two-part test. Attached to our testimony is a sentencing memorandum from an actual case to show how this process takes place. Any bill to implement parole in Maine would need to address the whole sentencing structure in the criminal code. For instance, since we have been using unsuspended sentences followed by probation, there needs to be a clear intersect on how parole and probation can coexist. If someone is out on parole during their unsuspended portion of a sentence, what happens to their suspended portion during a parole violation? Is it addressed by both the parole board and by the Court during a motion to revoke probation? If so, what happens if the outcome of those proceedings are different? For instance, currently the State can file a motion to revoke probation even when the person is still serving their unsuspended portion of their sentence.<sup>1</sup>

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<sup>1</sup> This is not uncommon in domestic violence offenses when the offender has a no contact order but still contacts their victim while being incarcerated. It is not considered a new crime, but a violation of their probation.

This will be problematic when you have a Judge revoking probation and a parole board ordering a different sanction. This is one of many situations that are not clarified by LD 1941.

Again, the Maine Prosecutors Association is not against the theoretical concept of parole, especially if it is adequately funded and implemented, but everyone agrees that this bill is insufficient.<sup>2</sup>

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There are also policy concerns regarding eligibility requirements, victim rights, and available resources for victim safety and offender accountability.

**To:** Commission to Examine Reestablishing Parole  
**From:** Legislative Staff  
**Date:** September 8, 2022  
**Re:** Timeline of Parole in Maine

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In 1913 the Maine Legislature passed Public Law 1913, Chapter 60, establishing parole, the State's first parole board, and replacing the State's "definite" sentencing system with what has now become known as "indeterminate" sentencing.<sup>1</sup> For those receiving and serving sentences, this change meant receiving a baseline sentence defined by a range between a minimum and a maximum number of years to serve, rather than a single baseline number of years.

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

With the exception of those who had been convicted of two prior felonies, all inmates (the term used at the time) were eligible for parole after serving their minimum sentence, as adjusted for "good-time."<sup>2</sup> Parole was also not available to those serving life sentences.

As it was established at the time, that system worked in the following way:

1. During the sentencing stage the judge, if having decided incarceration was warranted, 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.<sup>3</sup>
3. If, upon review of a person's application for parole, it was determined that parole was appropriate, the parolee would be released under the expectation of compliance with a number of conditions.<sup>4</sup>

A person released on parole was considered to still 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 for any reason that may be satisfactory to the warden or superintendent."<sup>5</sup>

Despite undergoing many modifications, the basic structure of parole in Maine remained the same through the recodification that resulted in the creation of MRS Title 34, in 1965.<sup>6</sup> By that time numerous provisions had been added to the structure of parole in Maine, including the provision of parole for

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<sup>1</sup> 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.

<sup>2</sup> "Good time" is the practice of reducing the number of days a person is required to serve by meeting certain conditions, like good behavior or participation in rehabilitation programs.

<sup>3</sup> For certain cases the authority to grant parole was conferred exclusively on the Governor. See Section 6 of Public Law 1913, Chapter 60.

<sup>4</sup> See sections 7-14 of Public Law 1913, Chapter 60.

<sup>5</sup> Public Law 1913, Chapter 60, section 9.

<sup>6</sup> However, the parole statutes are now located in Title 34-A, Chapter 5.

certain life sentences.<sup>7</sup> The Legislature had also distinguished parole from the Governor's pardon and commutation power in statute,<sup>8</sup> and further outlined the parameters of how parole functioned.<sup>9</sup>

In 1971, Maine's 104th Legislature passed an "Act to Create a Commission to Prepare a Revision of the Criminal Laws" (Private and Special Law 1971, Chapter 147). The Commission completed its work in 1975, a time during which there was a nationwide movement toward determinate sentencing.<sup>10</sup> The commission's work eventually lead to the establishment of the criminal code in 1975 (Public Law 1975, Chapter 499),<sup>11</sup> which included a requirement that persons sentenced to imprisonment be confined for a definite period of time, rather than an indeterminate period. The preamble of 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."<sup>12</sup>

This marked the end of parole in Maine for sentences issued after the effective date of that law. Parole remains for those sentenced prior to 1976,<sup>13</sup> it is governed by the provisions of Title 34-A, Chapter 5 and administered through the State Parole Board Rules and Policy ([accessible on the bottom of the page at this link](#)).

Since 1976 and prior to the consideration of LD 842, the bill that ultimately created this commission, there have been a number of proposals to reinstate or change parole in various ways including, but not limited to, the following:

Legislature	LD Number	Title
115 <sup>th</sup>	2224	An Act to Reinstate a System of Parole
116 <sup>th</sup>	901	An Act to Reinstate a System of Parole
119 <sup>th</sup>	2531	An Act to Institute a System of Parole for Certain Maine Criminal Code Prisoners
125 <sup>th</sup>	1500	An Act To Establish Positive Reentry Parole
126 <sup>th</sup>	873	An Act To Establish Positive Reentry Parole

There have also been a number of court cases relevant to parole in Maine including, but not limited to, the following:

- **Gilbert v. State**, 505 A.2d 1326 (Me.1986)
- **Bossie v. State**, 488 A.2d 477 (Me.1985)
- **Mottram v. State**, 232 A.2d 809 (Me.1967)
- **Collins v. State**, 161 Me. 445 (Me.1965)
- **Lewis v. Robbins**, 150 Me.121 (Me.1954)
- **Ex parte Mullen**, 146 Me.191 (Me.1951)
- **Smith v. Lovell**, 146 Me.63 (Me.1950)

<sup>7</sup> See page 629 in document titled: "Title 34 as of 1965 Recodification."

<sup>8</sup> See page 617 in document titled: "Title 34 as of 1965 Recodification."

<sup>9</sup> See Subchapter V, beginning on page 628 in document titled: "Title 34 as of 1965 Recodification."

<sup>10</sup> Maine Rejects Indeterminacy: A Case Study of Flat Sentencing and Parole Abolition – Final Report, 1983, Page 20.

<sup>11</sup> See also, <https://www.maine.gov/legis/lawlib/lld/criminalcode/index.html>.

<sup>12</sup> Preamble to LD 314 from 1975.

<sup>13</sup> MRSA Title 34-A, section 5801.

STATE OF MAINE

V.

MERRILL BOSTON

STATE'S SENTENCING MEMORANDUM

**PROCEDURAL HISTORY AND  
FACTUAL BASIS FOR THE CONVICTIONS**

**1. YRKCD CR-2019-30**

On June 17, 2019 Merrill Boston (hereinafter "Boston") entered a guilty plea to one count of Violation of a Protective Order, 19-A M.R.S. § 4011(1), a class D crime. Boston was sentenced to 364 days, all but 48 hours suspended, 2 years probation. Probation conditions include no use or possession of alcohol, illegal drugs, dangerous weapons, or firearms, random search and testing for the same, complete substance abuse counseling and certified batterer's intervention program, and to have no direct or indirect contact with Smith, and not enter her residence, place of employment, or place of education. On July 24, 2019, Boston received his first Motion for Probation Revocation for failing to refrain from contacting Smith failing to notify police of his probation status, failing to notify probation of his police contact and failing to refrain from using alcohol. On February 4, 2020, Boston admitted to the motion and received no further sanction.

Two further Motions for Probation Revocation were filed. On May 26, 2020, a motion was filed based upon the allegations in YRKCD CR-20-322 and that he failed to refrain from contacting Smith. On July 12, 2020, the second motion was filed and alleges

the crimes associated with docket number YRKCD CR-20-419. Boston admitted to both motions on March 19, 2021 and continued for sentencing.

## **2. YRKCD CR-20-322**

On May 19, 2020, Smith calls 911 stating “please come, he is not supposed to be here, he is trying to kill me.” Smith tells the dispatcher “he brought in a knife and held it to my neck.” At one point in the call, Smith states “he busted in the house and had a knife to me and almost suffocated me.” “I had a chair against the door and he busted in, he came over and took my phone and the first thing he did is have a knife and put it to my throat and he wanted to know who I was talking to on my phone and then he wouldn’t let me out of my room and then he tried to suffocate me.” The dispatcher asks Smith how she got free from him and Smith says “I begged, I told him I had three kids.” The dispatcher goes on to ask Smith why they were currently driving to Hannaford and Smith says “I told him you need to leave because your car is in the driveway and you are going to get arrested, I was trying to get him out but I needed to get out of the house to call for help, you need to take your car and get out because they are going to see your car and the only way I could get out is to convince him that I would go meet him.” Smith tells the dispatcher “the way he was acting to me, I thought he was going to kill me which I never thought before.” “It was so bad . . . he could kill me too, I never felt that before.” Smith said that Boston told her that he was going to kill her because he had to have her.

Officers are able to make contact with Boston and Smith in their separate cars. Boston was taken into custody and Smith was subsequently interviewed. In substance, Smith explained how she put a chair against the door before she went to bed, but Boston “busted” in through the door and went after her with a knife. She pleaded with him that

she had three kids. Boston grabbed her phone and asked for the passcode and for Smith to tell him whom she was talking with. At some point, Boston threw her off the bed and she landed on the floor. He also used a pillow to try to suffocate Smith. Smith said Boston did this to her multiple times that evening. Boston told her he was going to kill her and then kill himself. To get out of the situation, Smith came up with the plan to tell Boston that he would get arrested because his car was in her driveway. She told him to drive to Hannaford and she would pick him up there and bring him back to her house. While in their cars, Smith called 911. During the drive, she feared Boston would ram her off the road because she was using the phone.

Officers are able to see that Smith is visibly injured and take photographs. The injuries consist of a black eye and bruising to her arms. Smith surmises that the black eye is from when Boston was trying to suffocate her with the pillow, the force from his hand to her face while she is trying to fight back. The officers follow Smith back to her residence. In the residence, they are able to recover the knife that Boston put against Smith's throat. The officers see a chair approximately 10 feet away from the front door, which was in the middle of the kitchen away from any other chairs, corroborating Smith's report of her putting a chair against the front door. Smith points out the items Boston smashed and said that Boston threw her on top of those items, pinned her down, and would not let her get up or move towards the door. Officers follow up by asking her if he hurt her any other way and Smith said that he had a knife to her, he tried to suffocate her more than once and he did have his hands on her neck. Smith described Boston "choking" her and telling her that he was going to kill her because he cannot live without her. The officers asked her to describe this assault further, but because of Smith's

emotional state and the time of the night, they decided to leave and ask more questions at the domestic violence follow up interview.

The next day, Detective Galasyn interviewed Smith at her residence. Detective Galasyn immediately noticed a bruise from the inside corner of her right eye extending out to about the middle of her eye. He also saw a small gash underneath her chin and her neck appeared to be discolored. Smith also had bruises on her arms and elbows. Smith was able to give more details about the assault and events leading up to this specific assault. These events include Boston continuously contacting Smith to the point where she told him “no more” and blocked his phone number. When discussing the assault with the officers, Smith estimated that Boston put a pillow over her face at least three separate times and each time he did it, Boston held the pillow there for at least 20 seconds. Smith reported that she thought she was going to pass out when he did it. Detective Galasyn also followed up regarding the report of Boston “choking” Smith. Smith recalled Boston’s hands on her throat saying he was going to kill her. When Boston had his hands around her throat, she felt as she was going to lose consciousness.

A few days later Smith contacted the police and advised that the bruises on her right forearm had become more pronounced and the officers took additional photographs of her forearm and her black eye. During all of this, Boston was on probation in docket number YRKCDRCR-19-30 with a special condition that he was to have no direct or indirect contact with Smith.

On March 19, 2021, Defendant entered a guilty plea to Aggravated Assault (count 2), 17-A M.R.S. § 208-D(1)(D) a Class B crime, Domestic Violence Criminal Threatening with a Dangerous Weapon and a Prior (count 3), 17-A M.R.S. §209-



(1)(B)(2), 1604(5)(A) a Class B crime, and Domestic Violence Assault with a Prior (count 5), 17-A M.R.S. § 207-A(1)(B)(2) a Class C crime.

### 3. YRKCDCR-20-419

Boston remained in custody at the York County Jail in docket numbers YRKCDCR-19-30 and YRKCDCR-20-419. Boston still had probation conditions of no direct or indirect contact with Smith, and bails conditions were also added with this exact same prohibition. From the jail, Boston proceeded to make numerous calls to his sister Stacey Jette (hereinafter "Jette"). The following conversations were recorded by the jail between Boston and Jette:

a. June 8, 2020<sup>1</sup>

Jette: I'm getting Hemmey today

Boston: Why?

Jette: The person that has him has to be out where they are living because the lease is up

Boston: I thought it was the 15<sup>th</sup>

Jette: Um, no, would have had to pay another \$425 to stay there this week so she got out last night and I'm getting Hemmey this morning

Boston: Okay

Jette: So I'll have Hemmey now here

Boston: Send that message and see if anything comes back would you?

Jette: Yup, I will

b. June 10, 2020<sup>2</sup>

Boston: I can't make bail

Jette: Right

Boston: So that's not very optimistic

Jette: No but ah

Boston: Jon said the charges against me are very serious

Jette: Yea

Boston: You know I think it is all going to boil down to an individual

Jette: Well it comes down to several individuals

Boston: I don't know

Jette: The DA who is finally seeing that there is a veteran's issue here

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<sup>1</sup> Hemmey is Boston's dog that he left with Smith.

<sup>2</sup> Jon is a reference to attorney Jon Gale, Esq.

Boston: I don't know about that  
Jette: and a medical  
Boston: Don't know about that  
Jette: and the person involved who is swearing will not testify for the State if there is going to be jail time involved and  
Boston: He didn't tell me that  
Jette: and a parole officer  
Boston: Probation  
Jette: A probation officer who is committed to saying that you do need help, that you asked for some help, that we're trying to get help  
Boston: Well, I don't know, he didn't tell me, he didn't tell me that thing about that other individual, I know we can't, well I mean, we can mention names as far as that goes because I'm not in contact, because that's from his right?  
Jette: Right, yea

Boston: Hemmey is back camping?  
Jette: Hemmey is with me  
Boston: Oh  
Jette: Hemmey will stay with me from now from here on out, Hemmey will be here with me.  
Boston: Forever? Until I get home?  
Jette: I guess so, where else is he going to go?  
Boston: I thought that um she was going to take him with her when she got settled camping.  
Jette: Well supposedly but I don't know, it didn't seem like that when he got dropped off so I don't know  
Boston: So I guess she aint going to be there for me when I get out  
Jette: Well well that is not what you need to focus on

Jette: Try to stay positive, I don't know what else to tell you  
Boston: Yeah, I know, well like I said he didn't, when we talk today he didn't, that isn't how he put it to me so, he did say that she said that she wasn't going that he told me that she said she wasn't advocating for me for any prison time  
Jette: Right  
Boston: But he didn't say that, he didn't put it the way you said it though  
Jette: She's adamant, she's been calling the detective at Wells too  
Boston: Yeah  
Jette: Telling them  
Boston: Well um when you get off the phone text Stephanie for me  
Jette: Okay, yep  
Boston: Same thing  
Jette: Okay

c. June 12, 2020

Boston: Did you get any um response from Stephanie at all?  
 Jette: Um today she sent me a text um saying she's stressed, she's sad, she's um I don't have my cell phone, she's worried about you, she's mad  
 Boston: (inaudible) any chance she will come back?  
 Jette: She's mad at you, she's sad for you, she's fighting for you but she's angry at you and I said I understand, that is what I told her, I understand every emotion that you're feeling  
 Boston: Yeah  
 Jette: What else am I supposed to tell her?  
 Boston: No, I was just wondering if she, if she still loved me or not  
 Jette: Well she still cares a lot and she still wants she says if you want once I get out of this place where they won't let me have Hemmey she says I really would love to take him back until M is able to care for him and I mean I don't know if you want him to be going back and forth, back and forth, back and forth, or  
 Boston: If that is what she wants to do then do it, that's fine. I know where he is at, he's happy and he, I think that is a good fit for him  
 Jette: Okay

Similar conversations continue into late June and early July 2020. Boston's focus is on making sure that Smith stays in his "corner" and that Jette needs to pass on messages to Smith including "5143". Urban Dictionary defines that numerical code as "I still love you." During these phone calls, Boston also came up with a code name for Smith and used the name "Stephanie" to try to divert criminal prosecution for contacting his named victim. Jette confirmed with law enforcement that she did pass on a message to Smith for Boston.

### **THE STATE'S RECOMMENDATION FOR SENTENCE**

The State recommends the Court sentence the Defendant as follows:

#### **1. YRKCD CR-2019-30**

Full Revocation – 362 days with probation to terminate.

#### **2. YRKCD CR-20-322**

Count 2 – Aggravated Assault (Class B) – 10 years, all but 8 years, 4 years of probation consecutive to YRKCD CR-2020-419

Count 3 – Domestic Violence Criminal Threatening with the Use of a Dangerous Weapon and a Prior (Class B) – 8 years concurrent to count 2

Count 5 – Domestic Violence Assault (Class C) – 5 years concurrent to count 2

The State recommends the following special conditions of probation:

1. No use or possession of alcohol or illegal drugs;
2. No use or possession of dangerous weapons, firearms or ammunition;
3. Submission to random search and testing (including testing of blood, breath and urine) of the defendant's person, residence and motor vehicle for alcohol, illegal drugs, dangerous weapons, firearms and ammunition;
4. Substance abuse treatment and counseling to the satisfaction of probation;
5. Complete a Certified Batterers Intervention Program;
6. Complete a psychological evaluation and follow all recommended treatment plans;
7. No direct or indirect contact with Smith.

### **3. YRKCDRCR-20-419**

Count 1 – Violation of Condition of Release (Class C) – 4 years consecutive to YRKCDRCR-19-30

### **BASIS FOR THE STATE'S SENTENCING RECOMMENDATION**

The Law Court has announced a three-step process for sentencing in felony cases.

This process is outlined in cases such as *State v. Michaud*, 590 A.2d 538 (Me. 1991);

*State v. Hewey*, 622 A.2d 1151 (Me. 1993); and *State v. Shackelford*, 634 A.2d 1293 (Me.

1994). This procedure has been codified at 17-A M.R.S. § 1602. Sentences of

imprisonment “must be concurrent except they can be consecutive after considering the following factors:

- A. The convictions are for offenses based on difference conduct or arising from different criminal episodes;
- B. The individual was under a previously imposed suspended or unsuspended sentence and was on probation or administrative release, under incarceration or on a release program or period of supervised release at the time the individual committed a subsequent offense;
- C. The individual had been released on bail when the individual committed a subsequent offense, either pending trial of a previously committed offense or pending the appeal of previous conviction; or

- D. The seriousness of the criminal conduct involved in either a single criminal episode or in multiple criminal episodes or the seriousness of the criminal record of the individual, or both, require a sentence of imprisonment in excess of the maximum available for the most serious crime.”

17-A M.R.S. § 1608(1). In this case, all of the factors above support a consecutive sentence in each docket. If any counts run consecutive to each other, “the court must engage in separate *Hewey* analysis.” *State v. Downs*, 2009 ME 3, ¶ 14, 962 A.2d 950. The Court does not need to engage in a separate *Hewey* analysis in the remaining counts as long as they run concurrent with one of the primary counts. *Id.*

### **I. BASIC SENTENCE**

In its sentencing analysis, the Court must first determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the offender and by comparing it to all possible means of committing the offense. This is done without considering this particular defendant or any victim impact. “In a case involving multiple offenses for the same class . . . it would be appropriate . . . for the court to choose a representative or primary offense for analysis in the first step of the *Hewey* process.” *State v. Downs*, 2007 ME 41, ¶ 12, 916 A.3d 210.

#### **1. YRKCDCR-20-322**

The State argues that the Aggravated Assault (Class B) is the primary offense for analysis in the first step of the *Hewey* process. Aggravated Assault can be committed “intentionally, knowingly, or recklessly” by causing “bodily injury to another under circumstances manifesting extreme indifference to the value of human life.” 17-A M.R.S. § 208(1)(C). “Such circumstances include, but are not limited to, the number, location or nature of the injuries, the manner or method inflicted, the observable physical condition of the victim or the use of strangulation.” *Id.* In this case, the Defendant committed

Aggravated Assault (class B) against a family or household member by putting his hands around her neck and squeezing until she felt that she was going to lose consciousness. He put a pillow over her face multiple times, for long periods, until she thought she was going to pass out. He held the pillow so hard that she ended up with a black eye from the pressure of his hand holding down the pillow. During all of this, the Defendant told her she was going to die. Defendant's intent was very clear that night; this was supposed to be a murder-suicide. This conduct includes multiple incidents of assault, not just one, that includes the crime of Aggravated Assault. This Defendant's actions were part of a conscious plan to try to get his victim to stop breathing, all while telling her she is going to die. The crime of Aggravated Assault can be committed "intentionally, knowingly, or recklessly." The evidence shows that all of Defendant's actions were intentional, placing this crime on the high end of the continuum on how Aggravated Assault can be committed.

This Defendant intertwined strangulation and suffocation to commit the crime of Aggravated Assault in a dangerous, sadistic and heinous manner. The only reason this assault is not at the very top of the continuum is because of the lack of incontinence.<sup>3</sup> The particular nature and seriousness of the offenses puts the basic sentence of the crime of Aggravated Assault at 7 years.

## **2. YRKDCR-20-419**

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<sup>3</sup> Incontinence results when a victim's body's systematic functions shut down from the lack of oxygen.

Violation of Conditions of Release is a class C crime when a person is on bail for a felony offense and they fail to “avoid all contact with a victim of the alleged crime, a potential witness regarding the alleged crime or with any other family or household members of the victim or the defendant.” 15 M.R.S. § 1026(3)(A)(5). In this case, the Defendant was convicted of Violation of Conditions of Release by contacting a named domestic violence victim through his sister. Any violation of a court order is serious, but violating a no contact provision on a bail bond that deals with a named victim of domestic violence is of the most serious ways to commit the offense. Furthermore, the evidence shows that the Defendant committed the crime in a way to mask his criminality using code names for his victim during jail calls.

The crime is more egregious because Defendant’s conduct occurred while being held in custody. By engaging in this conduct, the Defendant has made it clear to his victim that no one can stop him from leaving her alone - a judge cannot stop him, jail cannot stop him. Most victims of domestic violence in this situation will comply with her abuser knowing that is the safest option for her in the long run.

The State does recognize that the contact was made indirectly and the actual content of the contact was not criminal in nature except for all the various court orders in place. Therefore, the basic sentence of 1 year to the Department of Corrections is appropriate when considering the particular nature and seriousness of the offense as committed by the Defendant.

## **II. MAXIMUM PERIOD INCARCERATION**

In arriving at the maximum period of incarceration, the sentencing Court must look beyond the nature and seriousness of the offense and examine the factors which are unique to the Defendant. *Hewey*, 622 A.2d 1151, 1154-55; *State v. Roberts*, 641 A.2d 177, 179 (Me. 1994). These circumstances may include both aggravating and mitigating factors. 17-A M.R.S. § 1602(1). “These sentencing factors include, but are not limited to, the character of the offender and the offender’s criminal history, the effect of the offense on the victim and the protection of the public interest.” *Id.* The sentencing justice is given great discretion in weighing mitigating and aggravating factors. *State v. Weir*, 600 A.2d 1105, 1006 (Me. 1991).

A. Mitigating Factors for YRKCDRCR-20-322 and YRKCDRCR-20-419

The State recognizes Boston is a veteran who was honorably discharged. He has also been a productive member of society by holding a steady job for most of his life. Boston has mental health diagnoses and has sought treatment through Veterans Affairs (VA).

B. Aggravating Factors for YRKCDRCR-20-322

(1) Multiple Offenses

“The fact that an offender committed multiple offenses is to be considered in the second step” as an aggravating factor. *State v. Downs*, 2007 ME 41, ¶ 12, 916 A.3d 210. Boston was not only convicted of Aggravated Assault (Class B), but also Domestic Violence Criminal Threatening with use of a Dangerous Weapon (Class B), and Domestic Violence Assault (Class C). The Aggravated Assault conviction is the primary charge, but his use of a knife to threaten Smith and his assaultive behavior of throwing Smith to the ground and pinning her down all weighs as an aggravating factor. Again, these crimes



were committed when Boston was on probation for a crime that Smith was the named victim in and that he had been ordered to have no contact with during his probation.

## (2) Character of the Defendant

All evidence points to Boston being a man that uses power and control to abuse women. Boston employed many of the tactics that are part of what is categorized as the Power and Control Wheel ([theduluthmodel.org](http://theduluthmodel.org)) to assert his power and control over Smith.

- a. Intimidation – Making her afraid by using looks, actions, and gestures. Smashing things. Destroying her property. Abusing pets. Displaying weapons.

Boston used all of these methods against Smith. Smith spoke about Boston smashing things, namely her phone, many times throughout their relationship. Boston often destroyed her property, and destroyed some of her property that evening. Smith told law enforcement how Boston hit her dog that night and displayed a knife to her. All of this conduct goes towards the intimidation tactic of the power and control wheel.

- b. Coercion and Threats – Making and/or carrying out threats to do something to hurt her. Threatening to leave her, commit suicide, or report her to welfare. Making her drop charges. Making her do illegal things.

Boston made a very clear threat to Smith that night, I am going to kill you. He also threatened suicide. Boston gave Smith the impression that if he can't have her, no one can. Coercion and Threats is a power and control tactic Boston uses against Smith.

- c. Isolation – Controlling what she does, who she sees and talks to, what she reads, and where she goes. Limiting her outside involvement. Using jealousy to justify actions.

Boston was adamant that he wanted to see Smith's phone and find out whom she had been talking to. Boston's jealousy gave him the self-justification of his actions which he used by demanding the right to look at Smith's phone whenever he wanted to see it. This jealousy goes directly to the Isolation tactic in the power and control wheel.

Boston has an ODARA score of 7+ which statistically means that "74% of such abusive partners commit another assault against their partner (or, in some cases, a future partner) that comes to the attention of the police, within an average of about 5 years." The following women had to obtain Protection From Abuse Orders against Boston to try to protect themselves from him:

J	Temporary Protection From Abuse Order	May 14, 2002
Cote	Temporary Protection From Abuse Order	September 29, 2014
	Order for Protection From Abuse	October 16, 2014
Smith	Temporary Protection From Abuse Order	December 4, 2018

Boston's character should be considered an aggravating factor in the sentencing analysis.

### (3) Criminal History

#### a. SPRDC-CR-1993-2348

On August 14, 1993, Boston was married to T. T arrived home from work and Boston was upset that she was wearing a white tank top and that T had straightened her hair. Boston started to accuse T of cheating on him. T called her brother Trevor Gordon (hereinafter "Gordon") and told him what happened. T told Boston she was leaving and

going to her mother's house and Boston came downstairs naked holding her car keys. T asked for them and Boston threw them out the door into the bushes. Boston went around locking all the doors and demanded that T go upstairs. Boston told T that if she did not go upstairs in two seconds he was going to punch a hole in the wall. T took the opportunity to run out of the house and was able to use the neighbor's phone to call her brother Gordon. T waited at the neighbor's house for Gordon to come pick her up and they saw Boston leave the house. While T is in Gordon's car, Boston came right up to the rear of their car, passed them, and then immediately put on his brakes. Gordon backed up into a driveway and turned around, now driving in the opposite direction. Boston was able to get in front of them again and stopped. Boston ran to Gordon's car and told him to roll down the window. Gordon rolled down the window a crack and Boston wanted it down all the way. Boston yelled and threaten them so Gordon put the car in reverse and started to back up, Boston smashed the window in. Boston left and Gordon and T reported the incident to the police.

Gordon filled out a witness statement for the police and gave the same timeline of events as T. Gordon specifically said that when he received the call from T he knew T was serious because of his knowledge of Boston's previous physical violence towards T.

Boston was charged with criminal mischief. The case was dismissed after Boston paid restitution in full.

b. SPRDCCR-1994-1485

On June 5, 1994, neighbors of T and Boston called the police as they witnessed T attempting to leave the residence and Boston came from the house and physically took T back into the house. T was screaming for help. Officers arrive and as they are

approaching the front door, T came out crying saying she was just beaten by her husband. Boston comes to the door with a baby in his hands saying T is lying.

T told the officers that they were arguing on the way back from the store in their car. During the car ride Boston elbowed T in the face three times. T told Boston she wanted to go to his dad's house but Boston told her he would rather take her home and beat her. At some point T reached over and Boston bit her. T showed the officers the bite mark on her arm. Once they got to the house he told her to get in the house or else. T ran into the house and Boston told her to take off all her clothes. T said no and ran outside the house. Boston ran after her, caught her and dragged her back inside. Boston threw her on the floor and the police arrived shortly after that. Boston at some point told T if she left, he would find her and kill her, he had also threatened to burn the house down with her in it.

Boston told the police that they had been arguing and T went to leave the house. Boston followed her out and brought her back inside. Boston sat T down in the living room so they could talk.

Boston was convicted of assault and sentenced to 6 months, all but 30 days suspended, 1 year probation. Probation conditions of domestic violence counseling and not to go to the premises at or near the residence of T Boston were ordered.

c. ALFSC-CR-14-1991

On August 25, 2014, J called 911 that Boston had thrown items and taken her purse and cellphone. J went to a neighbor's house to call the police. When officers make contact with J she said that she is going through a divorce with Boston and today he had repeatedly called and texted her cell phone which she turned off. Boston then started to call her work. When she left work, Boston was outside of her work asking to go to

dinner, but she didn't want to go. J left work and went to her residence and Boston was there. J accused him of stalking her. She later told police that he is controlling. J and Boston's argument escalated and Boston threw something. Boston threatened to smash the television. J said she was calling the police and she tried to retrieve her phone from her purse. Boston grabbed the purse instead and dumped out all the contents. J left the residence and flagged down a teenager from the neighborhood who had a cellphone so she could call the police.

Boston told police that he threw a wooden house knick-knack and broke a light fixture. Officers observed a ceiling fan with a glass cover over the bulb missing. The officer then sees glass behind the sofa and around surfaces in the living room.

Boston was charged with Criminal Mischief and Obstructing the Report of a Crime. This case was ultimately dismissed pursuant to his plea in CR-14-2733.

d. ALFSC-CR-14-2733

On September 26, 2014, while on bail in ALFSC-CR-14-1991, Cote called 911 that her ex-boyfriend, Boston, punched her bathroom mirror. Cote told police that Boston and she were arguing about Cote having a new boyfriend. Boston had been drinking. Boston grabbed Cote's left forearm and took the box of cigarettes out of her left hand. Boston tells Cote "you are lucky I don't just strangle you." Boston left and Cote noticed that her bathroom mirror and lamps had been smashed, the shower curtain had been ripped down and the screen to her television had been smashed. Boston was charged with criminal mischief, domestic violence assault, domestic violence terrorizing, and two counts of violation of conditions of release (use of alcohol and committing new crimes). Boston entered a guilty plea to Criminal Mischief, Violation of Condition of Release (use of

alcohol) and Violation of Condition of Release (new criminal Conduct) for 24 hours credit for time served. Boston also entered a guilty plea to Domestic Violence Terrorizing and was placed on a deferred disposition for a year. The terms of that deferred included taking all prescribed medications and to continue counseling until discharged, pay restitution in the amount of \$638.99 and to have no contact with Cote. Boston was successful on the deferred disposition and the State dismissed the Domestic Violence Terrorizing charge at the end of the deferred.

e. YRKCDCCR-2019-30

On January 9, 2019, Julia called 911 that her mother Smith was being assaulted by Boston. Police verified that Smith had obtained a protection order against Boston. When police arrive at the residence, they can hear movement inside, but no one will come to the door. Officers gained entry to the residence through a window and observed the kitchen area looked as though it had been destroyed. Items were strewn all over the kitchen floor and throughout the downstairs living room. One officer located Smith in the upstairs bathroom. Smith was crouched in the bathtub; she had her shirt over her head and appeared to be scared and crying. Officer left her until they could secure Boston.

Officer located Boston in the basement lying on a couch. They could smell the odor of alcohol from him and he appeared to be highly intoxicated. At the police station, Boston had fallen asleep and due to his level of intoxication, a breath test could not be performed. Officers speak to Smith and she reported that Boston showed up at her house around 9pm and was banging on her door to let him in so he could get his stuff. Boston demanded that Smith drive him home and when she refused, Boston said he was going to take Smith's truck. Smith said she would report it stolen and Boston started to smash

things in her kitchen. He kicked her kitchen cabinets, picked up the kitchen table and broke it. Boston knocked everything that was on the table to the floor. Officers observe the damage to the room. Smith was stuck on her left thigh by the table when Boston threw it. Boston also took Smith's phone at this point and would not give it back. Smith ran to the bathroom but Boston followed her and pulled down the curtains breaking the rings. Smith then went into her bedroom and Boston followed her there. In the bedroom, Boston poured something over the bed that appeared to be windshield wiper fluid and possibly dish soap. Smith next ran to the living room but Boston told her that he would destroy that too if she did not give him a ride home. Boston went outside to start the truck as he had taken Smith's keys and Smith took the opportunity to lock him out of her home.

Boston started banging on her door and she yelled at him to leave. Boston had Smith's phone so Smith got on her computer and emailed two people, her lawyer Amy Fairfield and her co-worker. She wrote to them "He is here and he has my phone. Help me." Officers verified those emails were sent. Smith went upstairs and Boston was able to again get into the house. Boston did give Smith back her phone as she said she was going to call her daughter Julia. Smith was able to call Julia and told her to call the police as Boston was destroying her house. Boston then took away the phone and demanded she call Julia back and tell her not to call the police. Boston grabbed Smith and shook her demanding she take him home and to tell Julia not to call the police. Smith managed to get away and ran into the bathroom and shut the door. They both heard pounding on the front door and Boston ran downstairs. That is when the police arrived.

Officers walked around the house and everything in the kitchen was destroyed, frozen food was thrown on the floor and the icemaker was pulled off and found under the sink in

the trash along with a movie DVD. The cabinet under the sink and kitchen chair were broken. Smith told police that Boston and she had ended their relationship. Smith was specifically asked about Boston putting his hands on her neck and Smith said not this time but it did happen once before in the past where he grabbed her around the neck and held her. Smith did have bruises on her left thigh from where the table was thrown at her.

Officers contact Julia for a statement. Julia reports that Smith called her and said that Boston was in the house and would not leave. Smith asked Julia to call 911 and have the police respond. The next day, on January 10, 2019 the school resource officer for Marshwood High school received a message from the high school's athletic director. The message contained a screen shot of an email that the athletic director received the night before at 9:26pm from Smith that said "he is here and has my phone. Help me." Smith was a teacher at Marshwood High School at the time.

Boston was charged with Violation of a Protective Order (Class C), Domestic Violence Assault and Criminal Mischief. Boston entered a guilty plea to Violation of a Protective Order (Class D) on June 17, 2019 and was sentenced to 364 days, all but 48 hours, and 2 years of probation with special conditions of no use or possession of alcohol, illegal drugs, dangerous weapons, or firearms, random search and testing for the same, complete a substance abuse evaluation, complete certified batterers' intervention program, and have no contact with Smith including not to enter her residence.

Less than one month later, on July 12, 2019 Smith was pulled over for erratic operation of her vehicle. Boston was a passenger in the car. Smith was under the influence and arrested for Operating Under the Influence. Officers declared Boston was in a fit condition to operate the vehicle and gave Smith's vehicle to Boston. At no time



did Boston tell police he was on probation, or that he had a condition of probation to have no contact with Smith. Boston also did not disclose to probation his contact with police. It wasn't until Smith appeared on the in custody prisoner list the following Monday, July 15, 2019, that undersigned counsel recognized Smith's name and pulled the report to see what the case was about. Undersigned counsel knew of the no contact provision in Boston's probation and forwarded the report to probation at that time. That was then the basis for the Motion for Probation Revocation dated July 24, 2019 that Boston admitted.

#### (4) The Effect of the Offenses on the Victims

To be able to quantify the effect of domestic violence and continued violations of court orders on a victim is an impossible task. In this case, Smith knows that court orders do not stop Boston. It does not matter if a protection order is in place, if bail conditions are in place, if probation conditions are in place, it does not even matter if Boston is behind bars, Smith will never feel safe. The night of the assault, Smith put a chair against her door just in case. The "just in case" turned into a reality that evening. Smith thought she was going to die at the hands of the man that would tell her he loves her.

The general sentencing provisions "permit sentences that do not diminish the gravity of offenses, with reference to the factors, among others, of the selection by the person [Boston] or of the property that was damaged or otherwise affected by the crime because of race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation." 17-A M.R.S. § 1501(8)(B). This was a gendered based crime. Boston picked Smith as his victim because of her sex, specifically because she is a woman.

The effects of the crimes on the on the victim is an aggravating factor.

#### (5) Protection of the Public Interest

The Maine Legislature has enacted specific laws to increase penalties for domestic violence in order to enhance victim safety and establish processes to hold offenders accountable. York County has one of the largest domestic violence agencies in the State, Caring Unlimited. This shows York County specifically has a public interest in preventing domestic violence. The general sentencing provisions also “recognize domestic violence as a serious crime against the individual and society.” 17-A M.R.S. § 1501(9). Domestic violence is a societal issue as recognized in our statute and we have a specific public interest in this crime.

The need for protection of the public’s interest in domestic violence is an aggravating factor.

After considering the above factors in YRKCDJR-20-322, the State would submit that the aggravating factors greatly outweigh the mitigating factors, warranting a maximum underlying sentence of 10 years.

#### C. Aggravating Factors for YRKCDJR-20-419

##### (1) Multiple Offenses

Boston entered a guilty plea to one count of felony Violation of Conditions of Release for contacting Smith. However, the evidence shows that he tried to contact her multiple times. On June 8<sup>th</sup>, 2020 Boston asked his sister to send a message to Smith and to see if anything comes back. On June 10<sup>th</sup>, 2020 Boston asks his sister to text “Stephanie” for him when they get off the phone and tells her to text the “same thing.” On June 26<sup>th</sup>, 2020 Boston tells his sister to text Smith “1543.” On July 2<sup>nd</sup>, 2020 Boston asked his sister to find out where Boston and Smith’s relationship is at, he wants to know what her thoughts

are. Boston tells his sister that Smith is in his corner and he needs to keep her there. On July 4<sup>th</sup>, 2020 Boston tells his sister to text “Stephanie” thank you and I love you.

This was repetitive, calculated conduct by Boston that was done in a way to mask his criminality and avoid prosecution by using a code name for the victim.

## (2) Character of the Defendant

As evidence by his continued violations of court orders protecting women and the recorded jail calls to his sister, Boston’s only concern is himself, and what he wants. The recorded calls highlight that he uses his sister, a woman who has no criminal history or prior contact with the criminal justice system, to help him commit a felony offense.

## (3) Criminal History

Criminal history is an aggravating factor for the same reasons as stated in YRKCD-CR-20-322.

## (4) The Effect of the Offense on the Victim

The effect of the crime of Violation of Conditions of Release on a domestic violence victim is profound. When abusers violated a judge’s order, the act of the violation sends the message to the victim that there is no check on their abuser. Everything Smith has to say should be viewed by the Court considering Smith’s status as a victim of domestic violence who feels she must appease her abuser. This victim will never feel safe, nothing the criminal justice system has done so far has kept her safe and she knows that Boston will not be in jail forever.

## (5) Protection of Public Interest

In these cases, there is a specific public interest that the Court should protect, the criminal justice process. A key to prosecuting domestic violence cases is letting the

victim have the confidence to tell their story while being protected from retaliation by the abuser. An abuser who contacts a victim in violation of a court order negatively impacts the integrity of the prosecution from bail conditions to final sentence. As we see on a daily basis in our courts, defendants file motions to amend bail to have contact with a person they have been accused of using domestic violence against. The court then listens to these victims, either through the district attorney's office or in person, on what their wishes are. This process should theoretically work if victims of domestic violence are actually left alone and the thought of future violence is non-existent. The Court is aware that is not the case in most prosecutions. Here, Boston's actions of having repeated contact with his victim while on probation and through a third party while in jail, show that his victim could not make decisions without interference from an abuser who has repeatedly threatened to kill her. This conduct undermines the sanctity of the criminal justice process. As this Court knows, many domestic violence cases cannot be prosecuted because of victim recantations, which is a very low rate in non-domestic violence cases. Victim recantations are almost unique to domestic violence prosecutions compared to other victim crimes. The need for protection of the criminal justice process from violations committed by Boston should be considered by the Court as an aggravating factor.

After considering the above factors in YRKCD CR-20-419, the State would submit that the aggravating factors greatly outweigh the mitigating factors, warranting a maximum underlying sentence of 4 years.

### **III. MULTIPLE SENTENCES OF IMPRISONMENT**

Sentences of imprisonment “must be concurrent except they can be consecutive after considering the following factors:

- A. The convictions are for offenses based on difference conduct or arising from different criminal episodes;
- B. The individual was under a previously imposed suspended or unsuspended sentence and was on probation or administrative release, under incarceration or on a release program or period of supervised release at the time the individual committed a subsequent offense;
- C. The individual had been released on bail when the individual committed a subsequent offense, either pending trial of a previously committed offense or pending the appeal of previous conviction; or
- D. The seriousness of the criminal conduct involved in either a single criminal episode or in multiple criminal episodes or the seriousness of the criminal record of the individual, or both, require a sentence of imprisonment in excess of the maximum available for the most serious crime.”

17-A M.R.S. § 1608(1). In this case, all of the factors apply to why the sentence in each docket number should be consecutive. This Courts needs to makes its decision regarding imposing concurrent or consecutive sentences before analyzing the final sentence under *Hewey. Stanislaw*, 2013 ME 43, ¶ 16, 65 A.3d 1242.

#### IV. FINAL SENTENCE

The final step of the sentencing analysis is the determination of what, if any, portion of the maximum period of incarceration should be suspended and accompanied by a period of probation. 17-A M.R.S. §1602(1)(C). The purpose of probation may be aimed at the protection of society through continued supervision of the offender, or it may be aimed at rehabilitation of the offender, or both.

##### 1. YRKCDCR-20-322

A significant period of unsuspended actual incarceration is necessary to meet the objectives of the General Sentencing Provisions of the Maine Criminal Code as set forth

in Title 17-A M.R.S. § 1501.<sup>4</sup> The nature and seriousness of the Defendant's conduct, the need for punishment and general deterrence, and to recognize domestic violence as a serious crime all warrant a significant sentence to the Department of Corrections. Boston has been given the opportunity to rehabilitate himself multiple times through deferred dispositions and probation. The previous attempts at deterrence has been ineffective.

The State is recommending a final sentence of 10 years, all but 8 years suspended, with 4 years of probation for Aggravated Assault consecutive to both YRKCDRCR-19-30 and YRKCDRCR-20-322. This sentence recognizes the need for the protection of society and this particular victim and some rehabilitation through continued supervision of Boston. In 2017, the sentencing statute was amended to add a specific provision for the court "to recognize domestic violence as a serious crime against the individual and

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<sup>4</sup> Section 1501 provides:

The general purposes of the provisions of this part are:

1. To prevent crime through the deterrent effect of sentences, the rehabilitation of the convicted person, and the restraint of the convicted persons when required in the interest of public safety;
2. To encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served;
3. To minimize correctional experiences which serve to promote further criminality;
4. To give fair warning of the nature of the sentences that may be imposed upon conviction of a crime;
5. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;
6. To encourage differentiation among offenders with a view to a just individualization of sentences;
7. To promote the development of correctional programs which elicit the cooperation of convicted persons; and
8. To permit sentences that do not diminish the gravity of offenses, with reference to the factors, among others, of: (A) The age of the victim; and (B) The selection by the defendant of the person against whom the crime was committed or of the property that was damaged or otherwise affected by the crime because of race, color, religions, sex.....
9. Recognize domestic violence and certified batterers' intervention program.

society and to recognize batterers' intervention programs . . . as the most appropriate and effective community intervention." 17-A M.R.S. § 1501(9).

The State's recommendation recognizes that Boston and society will best be served by a significant period of incarceration to the Department of Corrections, followed by the maximum period of probation.

2. YRKCDCR-20-419

The State is recommending a final sentence of 4 years, consecutive to 19-30, to recognize the need for protection of society, specifically women in general and all of his past victims. Boston is now 50 years old and has lived a life where he has repeatedly abused women. Boston is a very violent man and women need to be protected from him. At this point, probation conditions have not had a deterrent effect on curbing Boston's violent behavior towards women. Actual prison time is the only way to keep women safe from him.

The State's recommendation of 4 years, consecutive to 19-30, recognizes that Boston and society will best be served by a significant period of incarceration to the Department of Corrections.

## **V. OVERALL SENTENCE IS NOT EXCESSIVE**

In imposing consecutive sentences, this Court must determine that the unsuspended portion of the consecutive sentence "is not excessive and is proportionate to the offense." *Id.* ¶ 24. To do this, this Court conducts a two-part test, *Id.* ¶ 29. The first step is to compare "the gravity of the offense [with] the severity of the sentence." *State v. Ward*, 2011 ME 74, ¶ 20 n.5, 21 A.3d 1033 (quoting *Graham v. Florida*, 130 S. Ct. 2011, 2022 (2010)). Step two is to "compare the defendant's sentence with the sentences

received by other offenders in the same jurisdiction” only if step one led to “an inference of gross disproportionality.” *Id.* (quoting *Graham*, 130 S. Ct. at 2022). In this case, the unsuspended portion of the consecutive sentence is 12 years.

### 1. Step One

In determining the proportionality of the sentence and the offense, the Court can “consider the facts of the case in conjunction with ‘[t]he commonly accepted goals of punishment.’” *Stanislaw*, 2013 ME 43, ¶ 30, 65 A.3d 1242 (quoting *Bult v. Leapley*, 507 N.W.2d 325, 327 (S.D. 1993)). In this case, Boston made his victim feel as though she was going to die. He literally was trying to stop her from breathing. Boston has a history of being violent and destructive in his intimate relationships. Boston also has a history of violating court orders that are put in place to protect his victims. An unsuspended 12 year sentence is warranted when you have a history of domestic violence and then you strangle, suffocate your victim multiple times, hold a knife to her neck, all while being on probation with a no contact in place and then you continue to contact her from jail while both probation conditions and bail conditions are in effect. The State is recommending an unsuspended 12-year sentence even though the statute would allow for the State to argue for more time on consecutive sentences.

In comparing the gravity of the offense with the severity of the sentence, the sentence is not excessive and is proportionate to the offense.

### 2. Step Two

Only if there is an inference of gross disproportionality between the offenses and the sentence, is step two utilized. The State argues step two is not needed because the offenses and sentence is proportional. However, in abundance of caution, if the Court



finds that there is an inference of gross disproportionality, when comparing Defendant's sentence with the sentences received by other offenders, Defendant's sentence is not excessive and is proportionate to the offense.

In *State v. Reese*, the defendant was convicted of elevated aggravated assault, aggravated assault, and possession of a firearm by a prohibited person. 2010 ME 30 ¶ 1, 991 A.2d 398. Defendant was sentenced to twenty-nine years on the elevated aggravated assault, ten years on the aggravated assault, and 5 years on the possession of firearm by a prohibited person, all concurrent and no portion of the sentence suspended. *Id.* Defendant was in an intimate relationship with the victim and had previously threatened to kill her. *Id.* ¶ 3. Defendant hit the victim's head against a car window, ordered her to get out and shot at the victim 9 times with a gun as she tried to get away. *Id.* Two of the shots hit the victim, one in the back and one under the arm. *Id.* The victim underwent surgery, had an extended stay in the hospital, and survived. *Id.* The Court noted that "[t]he crime was also committed with cruelty because it occurred within the context of a violent relationship." *Id.* ¶ 30. However, defendant did not have any previous convictions for domestic violence related crimes. *Id.* ¶ 33.

Similar to the case at hand, Boston's crimes occurred within the context of a violent relationship. Boston threatened to kill Smith and took steps to accomplish that goal. Like Reese's victim, Smith lived in fear. Both of the defendants' actions put the victims at risk for death. Unlike *Reese*, Boston had a history of domestic violence and at the time was on probation conditions to have no contact with Smith.

The State recognizes *Reese*'s sentence of twenty-nine years is partially based on the use of the firearm and the life-threatening injuries the victim endured. However, in

comparing *Reese*'s sentence to Defendant's, a 12 year unsuspended sentence for strangulation and suffocation, holding a knife to the Smith's throat, all why being on probation not to contact Smith and then continuing to disobey court orders of no contact while in jail would be consistent with *Reese*'s conduct and his sentence.

In *State v. Perry*, the defendant was sentenced to 9 years on aggravated assault and then a consecutive 5 years, all suspended, 4 years probation on another count of aggravated assault, to be served consecutively to the first aggravated assault. 2017 ME 74, ¶ 11, 159 A.3d 840. Throughout the night, the defendant shoved his live-in girlfriend down causing her to injure her wrist, strangled her to the point of incontinence, attacked her in the bathroom, and took a knife to her neck. *Id.* at 3-4. The consecutive sentence was upheld because "no credible argument can be made that the seriousness of Perry's conduct did not rise to the level required of a sentence in excess of the maximum available for the most serious offense." *Id.* at 25.

Boston's violent attack on Smith on June 17, 2019 is very similar to Perry's attack on his victim. Both perpetrators threw their victims to the ground, both perpetrators strangled their victims, and both perpetrators held a knife to their victim's throat. Perry violently attacked his victim in the bathroom, but Boston suffocated his victim at least 3 times that night with a pillow. Both victims were left with bruises to their face and body.

Unlike in *Perry*, Boston was on probation at the time of the attack with a condition of no contact with his victim. Also, in this case and unlike in *Perry*, the State is requesting a consecutive sentence to a felony bail violation that occurred after the new criminal charges, not consecutive sentences to charges arising out of the same Indictment.

Comparing the sentence in *Perry* to the case at hand, Boston's sentence would not be excessive and is proportionate to the offenses.

### **CONCLUSION**

Given the seriousness of the offenses, the impact on the victim, and the lack of mitigating circumstances, and overwhelming aggravating factors the following sentence is appropriate:

19-30 – full probation revocation of 362 days

20-419 – 4 years consecutive to 19-30

20-322 – 10 years, all but 8 years, with 4 years of probation consecutive to 20-419.

Any lesser sentence diminishes the gravity of the offense, fails to give fair warning of the nature of the sentence that may be imposed upon conviction, fails to prevent crime through the deterrent effect of sentences and does not adequately protect public safety or the victims.

Dated: September 10, 2021

*Shira S. Burns*

Shira S. Burns, Asst. District Attorney  
Maine Bar No.: 004851

### **CERTIFICATE OF SERVICE**

I hereby certify that I, Shira S. Burns, Assistant District Attorney, have caused a copy of the above State's Sentencing Memorandum be served on the defendant by depositing a conformed copy by mail:

Jon Gale, Esq.