

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1429

S. P. 494

In Senate, March 20, 1981

Taken from the Table by the President and on Motion by Senator Collins of Knox, referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Conley of Cumberland.

Cosponsors: Representative Joyce of Portland and Representative O'Rourke of Camden.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Establish a Board of Prison Terms and Supervised Release.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 17-A MRSA § 1203-B, as enacted by PL 1979, c. 701, § 27, is repealed.

Sec. 2. 34 MRSA § 1551, as last amended by PL 1979, c. 194, is repealed and the following enacted in its place:

§ 1551. Membership of State Board of Prison Terms

A State Board of Prison Terms is created within the Department of Mental Health and Corrections, in this chapter called the "board," and the board shall consist of 5 members who are citizens and residents of the State, who shall be appointed by the Governor from persons with special training or experience in law, sociology, corrections, psychology or related areas. The term of the members of the board shall be 5 years and until their successors have been appointed and qualified, or at the pleasure of the Governor. The appointments will initially be made to assure continuity in the membership of the board by staggering the terms of office. A vacancy shall be filled for the unexpired term in the same manner in which an appointment is made. The members of the board,

other than its chairman, shall be paid at a per diem rate established by the Commissioner of Mental Health and Corrections and necessary expenses for each day actually spent in the work of the board. The Governor shall appoint a chairman who shall preside at all meetings of the board when present. The chairman shall serve full-time, at a salary determined by the Governor. The board shall meet at least once every 2 months and in addition may meet as often as necessary, at such times and places as the chairman may designate. The Department of Human Services, the Department of Mental Health and Corrections, officers and staffs of the penal and correctional institutions and law enforcement agencies in the State shall cooperate with the board in exercising its administration.

Sec. 3. 34 MRSA § 1552, as last amended by PL 1977, c. 455, § 7, is repealed and the following enacted in its place:

§ 1552. Powers and duties of the State Board of Prison Terms

1. Administration. The board shall, in accordance with applicable provisions of this chapter:

- A. Determine the time of release to community supervision in the case of each inmate and prisoner;
- B. Revoke supervision and reimprison when warranted due to violations of the conditions of release;
- C. Determine the time of discharge of prisoners from active supervision;
- D. The board may formulate policies, adopt regulations and establish organizational and operational procedures pertaining to its functions prescribed in this chapter; and
- E. The board may authorize and impose as a condition of release to community supervision that the individual make restitution to his victim or other authorized claimant in accordance with Title 17-A, chapter 54.

2. Advise; hearings; recommendations. The board shall, when requested by the Governor, advise concerning applications for pardon, reprieve or commutation, and shall, when so requested, hold hearings and cause an investigation to be made, and collect such records concerning the facts and circumstances of an inmate's or prisoner's crime, his past criminal record, social history, and physical and mental conditions as may bear on the application, and make recommendations regarding action by the Governor on the application. All information obtained under this subsection, and any report furnished to the Governor with respect thereto, is confidential.

3. Reports. The secretary of the board shall annually, after the 30th day of June, transmit to the Commissioner of Mental Health and Corrections a detailed report of the work of the State Board of Prison Terms and of the probation and parole activities of the Division of Probation and Parole for the preceding fiscal

year. The annual report shall be transmitted by the Commissioner of Mental Health and Corrections to the Governor for submission to the Legislature.

4. Subpoenas; oaths. The board, or any member thereof, may, in the performance of official duties, issue subpoenas, compel the attendance of witnesses and the production of books, papers and other documents pertinent to the subject of its inquiry, and administer oaths and take the testimony of persons under oath.

Sec. 4. 34 MRSA § 1553, as amended by PL 1975, c. 771, § 388, is repealed and the following enacted in its place:

§ 1553. Administrative assistant

The Board of Prison Terms shall appoint an administrative assistant or assistants who shall serve at the pleasure of the board. An administrative assistant shall devote full time to his duties and shall be compensated in such amount as is determined by the Governor. Subject to the regulations of the board, an administrative assistant may conduct a preliminary hearing with an inmate at any correctional institution and make written recommendations to the board concerning disposition. An administrative assistant shall also perform those duties assigned to him by the board.

Sec. 5. 34 MRSA c. 121, sub-c. II-A is enacted to read:

SUBCHAPTER II-A

RELEASE TO COMMUNITY SUPERVISION

§ 1571. Authority to release to community supervision

1. Release of prisoners. The Board of Prison Terms may, subject to the limitations of this subchapter, release to community supervision prisoners convicted under Title 17-A and sentenced to the Maine State Prison or Maine Correctional Center after the guidelines issued under section 1572 take effect. Supervisory responsibility will be assigned to the Bureau of Corrections, Division of Probation and Parole, who shall carry out such supervisory requirements as may be mandated by the board.

2. Guidelines. In deciding on release under this section, the board shall apply the guidelines issued under section 1572. After release, the prisoner shall be under community supervision until sentence expiration, as governed by the guidelines issued under section 1575.

3. Limitations on time of release. In no event may any prisoner be released to community supervision before the expiration of 1/2 of his sentence of imprisonment, less any earned special deductions awarded under Title 17-A, section 1253, subsection 4.

4. Sentences of less than 6 months. Subsection 1 does not apply to any prison sentence of less than 6 months.

§ 1572. Guidelines for release decisions

1. **Recommendations for guidelines; adoption.** On or before one year after the effective date of this subchapter, the Advisory Commission on Supervised Release Standards created under section 1576 shall recommend to the Board of Prison Terms guidelines governing release from imprisonment to community supervision; and the board shall adopt those guidelines upon receipt of the commission's recommendations.

2. **Content of guidelines.** The guidelines shall establish specific ranges of duration of confinement before release from imprisonment. They shall have as their objective the imposition of durations of confinement that are fairly proportionate to the gravity of the prisoner's criminal conduct; and that, consistent with the requirements of proportionality, promote the protection of the public from further crimes by the defendant. The guidelines shall give primary weight to the seriousness of the prisoner's current offense and his previous criminal record. In establishing these release guidelines, the Advisory Commission and the board shall take correctional facilities and program capacities into consideration.

3. **Variation.** The guidelines governing release from imprisonment shall also authorize variations from the guidelines ranges, where aggravating or mitigating circumstances exist. The guidelines shall define types of circumstances qualifying as aggravating or mitigating, and shall state the maximum variation permitted.

4. **Procedure for deciding release.** The guidelines shall also specify the procedures to be used by the board in deciding release in individual cases. Those procedures may authorize that individual release decisions under the guidelines be made by an affirmative vote of at least 3 members of the board.

§ 1573. Release decisions

1. **Hearing.** Within 6 months of the admission of a prisoner to any state prison or correctional institution, the board shall conduct a hearing to interview the prisoner and set the scheduled date of his release pursuant to subsection 2. Release is contingent upon satisfaction of the requirements of subsections 3, 4, 5 and 6.

2. **Application of ranges in setting release date.** In setting the scheduled release date for a prisoner pursuant to subsection 1, the board shall apply the appropriate ranges established pursuant to section 1572, subsection 2, except where the board invokes a variation from the range under the guidelines established pursuant to section 1572, subsection 3.

3. **Interview of prisoner.** Prior to the scheduled release date of any prisoner, the board shall interview the prisoner to review the record of his conduct during confinement, his release plan and his psychological or psychiatric report, if any.

4. **Postponement of release.** The board shall postpone a prisoner's scheduled

release date if it finds, after hearing, that the prisoner has been disciplined for misconduct during his confinement, and that the misconduct was serious. The board, after consulting with the Advisory Commission, shall adopt rules defining serious misconduct and specifying periods of postponement for that misconduct.

5. Release plan. Each prisoner shall furnish the board with a release plan prior to his scheduled release date. The board shall adopt rules specifying the elements of an adequate plan and may defer release of the prisoner for up to 90 days if it finds that the plan is inadequate.

6. Prisoners with record of violence or who are severely emotionally disturbed. If the board finds, after hearing, that the prisoner has had a substantial record of violence or finds, after consulting the psychological or psychiatric report submitted pursuant to subsection 3, that the prisoner is severely emotionally disturbed, the board may order postponement of the scheduled release until a future date. The board, after consulting with the Advisory Commission, shall establish rules for the implementation of this section.

§ 1574. Supervision following release

1. Supervision. Prisoners released by the board pursuant to this subchapter shall be supervised in the community until expiration of sentence less earned deductions under Title 17-A, section 1253.

2. Conditions of release supervision. Before release of any prisoner, the board shall set the conditions of release supervision, which would be sufficiently specific to serve as a guide to supervision and conduct; and shall inform the prisoner in writing thereof.

3. Discharge from active supervision to inactive supervision. The board may, pursuant to guidelines issued under section 1575, discharge prisoners from active supervision to inactive supervision for the remainder of the prisoner's term.

4. Rules for violation of conditions of supervision. The board, after consulting with the Advisory Commission, shall adopt rules of procedure for cases of alleged violations of the conditions of supervision. Those rules shall specify the procedure for notifying the person under supervision that he is charged with a violation, for holding preliminary hearings to determine whether there is probable cause to believe the person has committed a violation, for any retaking of the person pending final hearing and for holding a final hearing, not more than 90 days after the alleged violation, to determine whether the person has committed the violation.

5. Board actions upon violation of conditions of supervision. Where it has been determined that the person has violated the conditions of supervision, the board may:

- A. Restore the person to supervision;
- B. Reprimand the person;

- C. Modify the conditions of supervision;
- D. Extend the duration of active supervision; or
- E. Revoke supervision and reimprison the prisoner, subject to the limitations set forth in the guidelines under section 1575, subsection 3.

Any extension of active supervision under paragraph D, or reimprisonment under paragraph E, may not extend beyond expiration of term as established under subsection 1.

§ 1575. Guidelines for supervision and revocation

1. Recommendations; adoption of guidelines. On or before one year after the effective date of this subchapter, the Advisory Commission on Supervised Release Standards shall recommend to the Board of Prison Terms proposed guidelines governing release from active supervision and governing revocation of supervision; and the board shall adopt guidelines within 90 days after receiving the commission's recommendations.

2. Content of guidelines. The guidelines shall establish recommended ranges of duration of active supervision before discharge from active to inactive supervision under section 1574, subsection 3. The guidelines shall also specify what conditions normally continue to apply to the prisoner during the period of inactive supervision. It is the intent of the Legislature that supervisory resources should ordinarily be concentrated on the critical period immediately following release; and the guidelines should provide ranges of duration of active supervision that reflect that intent.

3. Duration of reimprisonment. The guidelines shall also establish ranges of duration of reimprisonment, or establish maximum durations of reimprisonment, for prisoners where supervision has been revoked and who are reimprisoned under section 1574, subsection 5, paragraph E.

§ 1576. Advisory Commission on Supervised Release Standards

1. Commission established. There shall be established an Advisory Commission on Supervised Release Standards. The commission shall consist of 7 members: One judge appointed by the Chief Justice of the Supreme Judicial Court; one member of the Senate and one member of the House of Representatives, appointed by the President of the Senate and the Speaker of the House of Representatives, respectively; 2 citizens, appointed by the Governor; the Commissioner of Mental Health and Corrections and the Chairman of the Board of Prison Terms.

2. Terms. Terms of appointed members shall be 5 years, provided the person continues to occupy the position which was the basis of eligibility for appointment. Appointments shall be made on a staggered basis. Each member shall continue to serve until a successor has been appointed. Appointed members shall be eligible for reappointment and appointments shall be made to fill unexpired terms.

3. **Reimbursement.** Members are entitled to all reasonable expenses actually paid or incurred in the performance of duty in the same manner as other state employees. Members who are not state employees shall be compensated at a per diem rate established by the Commissioner of Mental Health and Corrections for each day or part thereof spent on commission activities.

4. **Bylaws and rules; meetings.** The commission may adopt its own bylaws and rules of procedure and appoint a chairman. The commission shall meet at least semiannually at a place and time designated by the chairman and at such other times as may be specified by the chairman.

5. **Recommendations for guidelines.** The commission shall recommend guidelines for release and supervision of prisoners pursuant to this subchapter.

6. **Report.** The Department of Mental Health and Corrections and the Board of Prison Terms shall report to the commission on an annual basis the experiences of the department and the board in the application of the guidelines.

7. **Personnel.** The department shall provide professional and clerical assistance and such office space as is required by the commission.

§ 1577. Applicability of the Maine Administrative Procedure Act

The rule-making provision of the Maine Administrative Procedure Act, Title 5, chapter 375, applies to the adoption of guidelines under this subchapter.

§ 1578. Retroactivity

1. **Persons convicted prior to May 1, 1976.** Persons convicted prior to May 1, 1976 who become eligible for parole under the former provision of this Title and persons convicted under Title 17-A after May 1, 1976 and sentenced before the effective date of the release guidelines under section 1572, are subject to this section, if they are in prison on the effective date of the guidelines.

2. **Hearing; release.** The Board of Prison Terms shall hear the cases of the prisoners, and shall determine the date when the person would be released were the guidelines applicable to his case. The board shall release the person on that date, except in cases where the board determines that retention of the person in prison for an additional period is specifically required in the public interest and sets forth specific reasons in writing for that determination. The Advisory Commission shall recommend to the board, and the board shall adopt, rules specifying the circumstances under which retention would be specially required in the public interest.

3. **Community supervision.** Upon release, these persons shall be subject to community supervision as provided for in sections 1574 and 1575 and guidelines thereunder.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1982-83

MENTAL HEALTH AND CORRECTIONS,

DEPARTMENT OF

Parole Board

Positions	(2)
Personal Services	\$45,481
All Other	3,000
Total	<u>\$48,581</u>

STATEMENT OF FACT

This bill establishes a system for providing for supervised release of prisoners prior to the expiration of their court-imposed sentence. Eligibility for release will occur when a prisoner has completed 1/2 of his sentence less earned meritorious good time. The decision to release an offender will be made by a Board of Prison Terms which would replace the present Parole Board.

The bill also establishes an Advisory Commission on Supervised Release Standards which will advise the board in the formulation of guidelines and rules governing release and supervision. The board, after receiving the recommendations of the Advisory Commission, will adopt guidelines to establish ranges of duration of imprisonment prior to release to community supervision. The guidelines would be designed to achieve the following objectives:

1. Punishment which is commensurate with the seriousness of the prisoner's criminal conduct;
2. The deterrence of criminal conduct and the protection of the public from further crimes by the defendant; and
3. In achieving the above purposes, the board shall give primary weight to the seriousness of the prisoner's present offense and criminal history.

The bill also has a provision for adding bad time to the expected release date determined by the board. Should an offender be found guilty of serious misconduct while in prison, he could be punished by having his release date postponed. This is an important incentive to the inmate to follow the rules and regulations of the prison while incarcerated and an important control mechanism over the conduct of the inmates.

Finally, the bill provides that when inmates are released into the community they should be supervised by the Division of Probation and Parole.

The increase in the number of inmates in the state's correctional system has resulted in crowding of the state's correctional facilities. Early release of inmates

who are not dangerous can be a cost-efficient way of handling increased correctional population while preserving the public's safety.

This bill is modeled upon similar legislation in the State of Oregon which has successfully implemented this system of supervised release using objective standards to guide release decisions. The United States Parole Commission has also adopted similar procedures.

Section 6 of the bill provides an appropriation for the Parole Board to allow the creation of the new Board of Prison Terms and an Advisory Commission on Supervised Release Standards.