

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1358

6
7 H.P. 1033

House of Representatives, March 29, 1983

8 Referred to the Committee on Health and Institutional Services. Sent up
9 for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative McHenry of Madawaska.

Cosponsor: Senator Violette of Aroostook.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Establish a State Board of
18 Prison Terms and Supervised Release.
19

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

22 Sec. 1. 34 MRSA §1551, as amended by PL 1979, c.
23 194, is repealed and the following enacted in its
24 place:

25 §1551. Membership on State Board of Prison Terms

26 A State Board of Prison Terms is created within
27 the Department of Corrections, in this chapter called
28 the "board." The board shall consist of 5 members who
29 are citizens and residents of the State, who shall be
30 appointed by the Governor from persons with special
31 training or experience in law, sociology, correc-
32 tions, psychology or related areas. The term of the
33 members of the board shall be 5 years and until their

1 successors have been appointed and qualified, or at
2 the pleasure of the Governor. The appointments will
3 initially be made to assure continuity in the member-
4 ship of the board by staggering the terms of office.
5 A vacancy shall be filled for the unexpired term in
6 the same manner in which an appointment is made. The
7 members of the board, other than its chairman, shall
8 be paid at a per diem rate established by the Commis-
9 sioner of Corrections and necessary expenses for each
10 day actually spent in the work of the board. The
11 Governor shall appoint a chairman who shall preside
12 at all meetings of the board when present. The chair-
13 man shall serve full time, at a salary determined by
14 the Governor. The board shall meet at least once
15 every 2 months and in addition may meet as often as
16 necessary, at such times and places as the chairman
17 may designate. The Department of Human Services, the
18 Department of Mental Health and Mental Retardation,
19 the Department of Corrections, officers and staffs of
20 the penal and correctional institutions and law
21 enforcement agencies in the State shall cooperate
22 with the board in exercising its administration.

23 Sec. 2. 34 M RSA §1552, as amended by PL 1977, c.
24 455, §7, is repealed and the following enacted in its
25 place:

26 §1552. Powers and duties of the State Board of
27 Prison Terms

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

30 A. Determine the time of release to community
31 supervision in the case of each inmate and pris-
32 oner;

33 B. Revoke supervision and reimprison when war-
34 ranted due to violations of the conditions of
35 release;

36 C. Determine the time of discharge of prisoners
37 from active supervision;

38 D. The board may formulate policies, adopt regu-
39 lations and establish organizational and opera-
40 tional procedures pertaining to its functions
41 prescribed in this chapter; and

1 E. The board may authorize and impose as a condi-
2 tion of release to community supervision that the
3 individual make restitution to his victim or
4 other authorized claimant in accordance with
5 Title 17-A, chapter 54.

6 2. Advise; hearings; recommendations. The board
7 shall, when requested by the Governor, advise con-
8 cerning applications for pardon, reprieve or commuta-
9 tion, and shall, when so requested, hold hearings and
10 cause an investigation to be made, and collect such
11 records concerning the facts and circumstances of an
12 inmate's or prisoner's crime, his past criminal
13 record, social history and physical and mental condi-
14 tions as may bear on the application, and make recom-
15 mendations regarding action by the Governor on the
16 application. All information obtained under this sub-
17 section, and any report furnished to the Governor
18 with respect thereto, is confidential.

19 3. Reports. The secretary of the board shall
20 annually, after June 30th, transmit to the Commis-
21 sioner of Corrections, a detailed report of the work
22 of the State Board of Prison Terms and of the proba-
23 tion and parole activities of the Division of Proba-
24 tion and Parole for the preceding fiscal year. The
25 annual report shall be transmitted by the Commis-
26 sioner of Corrections to the Governor for submission
27 to the Legislature.

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

35 Sec. 3. 34 MRSA §1553, as amended by PL 1975, c.
36 771, §388, is repealed and the following enacted in
37 its place:

38 §1553. Administrative assistant

39 The State Board of Prison Terms shall appoint an
40 administrative assistant or assistants who shall

1 serve at the pleasure of the board. An administrative
2 assistant shall devote full time to his duties and
3 shall be compensated in such amount as is determined
4 by the Governor. Subject to the regulations of the
5 board, an administrative assistant may conduct a pre-
6 liminary hearing with an inmate at any correctional
7 institution and make written recommendations to the
8 board concerning disposition. An administrative
9 assistant shall perform those duties assigned to him
10 by the board.

11 Sec. 4. 34 MRSA c. 121, sub-c. II-A is enacted
12 to read:

13 SUBCHAPTER II-A

14 RELEASE TO COMMUNITY SUPERVISION

15 §1571. Authority to release to community supervision

16 1. Release of prisoners. The State Board of
17 Prison Terms may, subject to the limitations of this
18 subchapter, release to community supervision pris-
19 oners convicted under Title 17-A and sentenced to the
20 Maine State Prison or Maine Correctional Center.
21 Supervisory responsibility will be assigned to the
22 Department of Corrections, Division of Probation and
23 Parole, who shall carry out such supervisory require-
24 ments as may be mandated by the board.

25 2. Guidelines. In deciding on release under this
26 section, the board shall apply the guidelines issued
27 under section 1572. After release, the prisoner shall
28 be under community supervision until sentence expira-
29 tion, as governed by the guidelines issued under
30 section 1575.

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

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

1 §1572. Guidelines for release decisions

2 1. Recommendations for guidelines; adoption. The
3 board shall adopt guidelines governing release from
4 imprisonment to community supervision.

5 2. Content of guidelines. The guidelines shall
6 establish specific ranges of duration of confinement
7 before release from imprisonment. They shall have as
8 their objective the imposition of durations of con-
9 finement that are fairly proportionate to the gravity
10 of the prisoner's criminal conduct; and that, con-
11 sistent with the requirements of proportionality,
12 promote the protection of the public from further
13 crimes by the defendant. The guidelines shall give
14 primary weight to the seriousness of the prisoner's
15 current offense and his previous criminal record. In
16 establishing these release guidelines, the board
17 shall take correctional facilities and program capac-
18 ities into consideration.

19 3. Variation. The guidelines governing release
20 from imprisonment shall authorize variations from the
21 guideline ranges, where aggravating or mitigating
22 circumstances exist. The guidelines shall define
23 types of circumstances qualifying as aggravating or
24 mitigating, and shall state the maximum variation
25 permitted.

26 4. Procedure for deciding release. The guidelines
27 shall specify the procedures to be used by the board
28 in deciding release in individual cases. Those proce-
29 dures may authorize that individual release decisions
30 under the guidelines be made by an affirmative vote
31 of at least 3 members of the board.

32 §1573. Release decisions

33 1. Hearing. Within 6 months of the admission of a
34 prisoner to any state prison or correctional institu-
35 tion, the board shall conduct a hearing to interview
36 the prisoner and set the scheduled date of his
37 release pursuant to subsection 2. Release is contin-
38 gent upon satisfaction of the requirements of subsec-
39 tions 3, 4, 5 and 6.

1 2. Application of ranges in setting release date.
2 In setting the scheduled release date for a prisoner
3 pursuant to subsection 1, the board shall apply the
4 appropriate ranges established pursuant to section
5 1572, subsection 2, except where the board invokes a
6 variation from the range under the guidelines estab-
7 lished pursuant to section 1572, subsection 3.

8 3. Interview of prisoner. Prior to the schedules
9 release date of any prisoner, the board shall inter-
10 view the prisoner to review the record of his conduct
11 during confinement, his release plan and his psycho-
12 logical or psychiatric report, if any.

13 4. Postponement of release. The board shall post-
14 pone a prisoner's scheduled release date if it finds,
15 after hearing, that the prisoner has been disciplined
16 for misconduct during his confinement, and that the
17 misconduct was serious. The board shall adopt rules
18 defining serious misconduct and specifying periods of
19 postponement for that misconduct.

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

26 6. Prisoners with record of violence or who are
27 severely emotionally disturbed. If the board finds,
28 after hearing, that the prisoner has had a substan-
29 tial record of violence or finds, after consulting
30 the psychological or psychiatric report submitted
31 pursuant to subsection 3, that the prisoner is
32 severely emotionally disturbed, the board may order
33 postponement of the scheduled release until a future
34 date. The board shall establish rules for the imple-
35 mentation of this section.

36 §1574. Supervision following release

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

1 2. Conditions of release supervision. Before
2 release of any prisoner, the board shall set the con-
3 ditions of release supervision, which would be suffi-
4 ciently specific to serve as a guide to supervision
5 and conduct; and shall inform the prisoner in writing
6 thereof.

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

12 4. Rules for violation of conditions of super-
13 vision. The board shall adopt rules of procedure for
14 cases of alleged violations of the conditions of
15 supervision. Those rules shall specify the procedure
16 for notifying the person under supervision that he is
17 charged with a violation, for holding preliminary
18 hearings to determine whether there is probable cause
19 to believe the person has committed a violation, for
20 any retaking of the person pending final hearing and
21 for holding a final hearing, not more than 90 days
22 after the alleged violation, to determine whether the
23 person has committed the violation.

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

28 A. Restore the person to supervision;

29 B. Reprimand the person;

30 C. Modify the conditions of supervision;

31 D. Extend the duration of active supervision; or

32 E. Revoke supervision and reimprison the pris-
33 oner, subject to the limitations set forth in the
34 guidelines under section 1575, subsection 3.

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

1 §1575. Guidelines for supervision and revocation

2 1. Adoption of guidelines. The board shall adopt
3 guidelines governing release from active supervision
4 and revocation of supervision.

5 2. Content of guidelines. The guidelines shall
6 establish recommended ranges of duration of active
7 supervision before discharge from active to inactive
8 supervision under section 1574, subsection 3. The
9 guidelines shall specify what conditions normally
10 continue to apply to the prisoner during the period
11 of inactive supervision. It is the intent of the
12 Legislature that supervisory resources should ordi-
13 narily be concentrated on the critical period immedi-
14 ately following release; and the guidelines should
15 provide ranges of duration of active supervision that
16 reflect that intent.

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

23 §1576. Applicability of the Maine Administrative
24 Procedure Act

25 The rule-making provision of the Maine Adminis-
26 trative Procedure Act, Title 5, chapter 375, applies
27 to the adoption of guidelines under this subchapter.

28 §1577. Retroactivity

29 1. Persons convicted prior to May 1, 1976. Per-
30 sons convicted prior to May 1, 1976, who become eli-
31 gible for parole under the former provision of this
32 Title and persons convicted under Title 17-A after
33 May 1, 1976, and sentenced before the effective date
34 of the release guidelines under section 1572, are
35 subject to this section, if they are in prison on the
36 effective date of the guidelines.

37 2. Hearing; release. The State Board of Prison
38 Terms shall hear the cases of the prisoners, and
39 shall determine the date when the person would be

1 released, were the guidelines applicable to his case.
2 The board shall release the person on that date,
3 except in cases where the board determines that
4 retention of the person in prison for an additional
5 period is specifically required in the public inter-
6 est and sets forth specific reasons in writing for
7 that determination. The board shall adopt rules
8 specifying the circumstances under which retention
9 would be specially required in the public interest.

10 3. Community supervision. Upon release, these
11 persons shall be subject to community supervision as
12 provided for in sections 1574 and 1575 and guidelines
13 under those sections.

14 STATEMENT OF FACT

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

23 The board will adopt guidelines to establish
24 ranges of duration of imprisonment prior to release
25 to community supervision. The guidelines would be
26 designed to achieve the following objectives:

27 1. Punishment which is commensurate with the
28 seriousness of the prisoner's criminal conduct;

29 2. The deterrence of criminal conduct and the
30 protection of the public from further crimes by the
31 defendant; and

32 3. In achieving the purposes of this bill, the
33 board shall give primary weight to the seriousness of
34 the prisoner's present offense and criminal history.

35 The bill also has a provision for adding bad time
36 to the expected release date determined by the board.
37 Should an offender be found guilty of serious miscon-
38 duct while in prison, he could be punished by having

1 his release date postponed. This is an important
2 incentive to the inmate to follow the rules and regu-
3 lations of the prison while incarcerated and an
4 important control mechanism over the conduct of the
5 inmates.

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

9 The increase in the number of inmates in the
10 state's correctional system has resulted in crowding
11 of the state's correctional facilities. Early release
12 of inmates who are not dangerous can be a
13 cost-efficient way of handling increased correctional
14 population while preserving the public's safety.

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

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