Maine Judicial Branch
Administrative Office of the Courts

Report to the Joint Standing Committee of the Legislature having jurisdiction over criminal justice and public safety regarding alternative sentencing
October 31, 2005

In the summer of 2003, the 121st Legislature created the *Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners* to address Maine's rapidly growing jail and prison population. In January of 2004, this Commission issued its Part 1 report. A particular focus was on the impact of current sentencing laws and the use of alternative sentences. One outcome of the Commission's recommendations was LD 1903, *An Act to Further Implement the Recommendations of the Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners and the Recommendations of the Commission to Improve Community Safety and Sex Offender Accountability*, which changed numerous aspects of the criminal statutes to allow a greater range of dispositional alternatives.. This law also required that a report be submitted by the Judicial Branch in consultation with the district attorneys' offices to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters by September 30, 2005, regarding the impact of sentencing alternatives (a 30 day extension was granted).

Due to the limited duration of time between the effective date of LD 1903 of July 30, 2004, and this report, any results must be considered as preliminary and lacking sufficient data to support final conclusions on this topic. The specific time frame under the consideration of this report is July 30, 2004, to July 30, 2005. Additionally, due to a lack of funding a formal study could not be conducted. The sources of information for this report are the following:

- A query of the Maine Judicial Information System (MEJIS) regarding the frequency with which deferred disposition and administrative release have been imposed,
- A survey of Superior Court justices and District Court judges regarding the use of alternative sentences, knowledge of jail diversion efforts, and awareness of rehabilitation options in their communities, and
- Telephone or in-person interviews of district attorneys regarding the use of alternative sentences.

The primary sentencing alternatives under consideration are deferred disposition and administrative release. **Deferred disposition** is described by the *Maine Criminal Statutes* (Title 17-A, Ch. 54-F) as follows:

Following a plea of guilty to a Class C, Class D, or Class E crime, except a crime expressly providing that one or more punishment alternatives it authorizes may not be suspended (§1348) ...the court may order sentencing deferred to a date certain or determinable and impose requirements upon the person, to be in effect during the period of deferment, considered by the court to be reasonable and appropriate to assist the person to lead a law-abiding life. (§1348-A) If the court finds that the person has complied with the court-imposed deferment requirements, the could shall impose a sentence of unconditional discharge under section 1346, unless the

attorney for the State, prior to sentence imposition, moves the court to allow the person to withdraw the plea of guilty...If the court finds that the person has inexcusably failed to comply with the court-imposed deferment requirements, the court shall impose a sentencing alternative authorized for the crime to which the person pled guilty. (§1348-B) If during the term of the deferment the court finds that the person has violated the requirements, the court may continue the period of deferment with conditions unchanged, modify the requirements, add further requirements or terminate the running of the period of deferment and impose a sentencing alternative. (§1348-B) Examples of deferment requirements are attendance at counseling, payment of restitution, community service work, obtaining a GED, and becoming gainfully employed.

According to the Commission, the purpose of deferred disposition was to give judges an alternative punishment to probation or incarceration (*Report of the Commission, January, 2004).* This intermediate punishment left the responsibility for compliance with the deferment conditions solely with the offender. The district attorney might become aware of noncompliance at some point and, with probable cause, be able to return to court for disposition. Otherwise, noncompliance might become evident at the time of final disposition when the offender would be required to provide proof of his or her performance. No provision was made for formal monitoring of the offender.

Administrative release is described by Maine Criminal Statutes (Title 17-A, Ch. 54-G) as follows:

Following conviction of a Class D or Class E crime, a person may be sentenced to administrative release for a period not to exceed one year, unless the punishment for the specific crime may not be suspended, a period of probation is included, or a sentence of administrative release would diminish the gravity of the crime. (§1349) The court can modify the requirements, discharge the convicted person earlier than the period originally imposed. (§1349-A) Administrative release may accompany a suspended sentence. (§1349-B) The court shall attach requirements as determined to be reasonable and appropriate to help ensure accountability and rehabilitation. Other requirements may include the payment of fines and restitution and the performance of community service. The attorney for the State may seek to revoke administrative release if probable cause exists to believe that a requirement of the release has been violated. (§1349-C,D)

The Commission intended that this revision of the statutes would allow the court to sentence certain offenders to "an unsupervised, non-probation option where appropriate" and to permit probation officers to immediately move to convert existing probations to administrative release status (*Report of the Commission, January, 2004*).

This report is required by statute to address the following questions:

1.How often were deferred disposition and administrative release used during this time frame? According to MEJIS, deferred disposition has been ordered in 389 cases and administrative release has been ordered in 126 cases. Given the effective date of the statutory

changes and the lag time between arrest and adjudication, the use of these two alternatives did not become significant until March, 2005. The data indicates a trend of increased use over time.

The survey of judges indicated that the great majority of the respondents utilize deferred disposition while a somewhat small majority utilize administrative release. Of those using these alternatives, the rate of usage is typically less than 5% with a few using them more frequently. Most have found them to be useful but a significant number have not. The judges were asked to comment on how deferred disposition could be improved. Responses included that it was too soon to tell, that better oversight was needed, that probation should still be available, and that the support of the district attorneys is needed. In regards to administrative release, a frequent concern was the lack of oversight and the shifting of the burden for monitoring from the Department of Corrections to the courts or the district attorney's office.

An additional variable is the familiarity of judges, district attorneys, and defense attorneys with these options. Surveys of judges and district attorneys have indicated a significant concern with the lack of accountability of the offenders although the actual usage varies from district to district. District attorneys have stated that their offices neither have the mission nor the resources to provide supervision of offenders. Judges and district attorneys have historically been creative in fashioning sentences and in many jurisdictions have continued to do this without recourse to deferred disposition and administrative release. A concern of district attorneys has been the limited outcomes of unconditional discharge available under deferred disposition. One district attorney has chosen to not use deferred disposition at all because the only available sentence for its successful completion was unconditional discharge. However, this outcome was not considered appropriate for deferred disposition types of cases. Several district attorneys indicated greater willingness to utilize these alternatives after the statute has been revised. This revision, LD 1505, *An Act to Amend the Sentencing Laws*, now Public Law 265, was signed by the governor on May 31, 2005, for emergency implementation. PL 265 allows fines and split sentences to include imprisonment in addition to any alternative sentences, assigns responsibility for victim notification, allows the imposition of probation in certain instances for Class D and E crimes, changes some of the legal term language and definitions of the requirements for burden of proof, and simplifies the summons and arrest processes when the State moves to terminate an alternative sentence.

2.How effective have these alternatives been in ensuring the accountability and rehabilitation of offenders; what has been the impact on recidivism rates? It is not possible to assess this at this relatively early point in the use of these alternatives. In order to respond to this question, a study of considerable sophistication over a span of years will be required. Individual outcomes for each instance in which these alternatives were imposed must be tracked and then analyzed in aggregate. To be of greatest value, this group of offenders sentenced to deferred disposition and administrative release should be compared with a matched group for which other sentences were imposed. It is also necessary to reach consensus among the various agencies tracking recidivism on the definition of recidivism. For example, is recidivism restricted to reconviction or would it include rearrest? The time frame for considering recidivism is important as well. A longitudinal perspective in which data is collected over several years post-adjudication and after the completion of the sentence is recommended. For such a study, additional funding is required.

3.What has been the impact of these alternatives on the resources of the courts? Given the limited use of these alternatives and their recent implementation, it is not possible at this point to assess the impact. The rates of success or failure by offenders in complying with the requirements of these sentences are not yet evident. The courts will have to address both outcomes with formal hearings leading to final disposition of these cases. The statute also provides for modification of the requirements during the term of the sentence, which would necessitate further action on the court's part. This level of involvement by the court is greater than would occur if the offender had been sentenced to incarceration.

4.What has been the impact of these alternatives on the resources of district attorneys offices? At this time, the numbers of defendants sentenced to deferred disposition or administrative release is not significant in most of the district attorneys' offices. Cumberland County is currently supervising 125 defendants on deferred disposition and expects to achieve an annual caseload of 400 cases. Only Cumberland County has created a new system to monitor compliance, although the sufficiency of funding based on court-ordered supervision fees is not yet known. If the funding is not adequate, the Cumberland County district attorney will not be able to agree to these alternative sentences.

In general, district attorneys' offices will receive notification of an offender's compliance from the defense attorney or offender and will be required to be prepared to accept or contest this outcome in court. If an office becomes aware of noncompliance during the term of the sentence, the district attorney may move the court to terminate the remainder of the period of deferment. This requires some attention on the part of the office to information regarding compliance, either through formal or informal means. While these alternative sentences were designed to address relatively low risk offenders who are presumed to be capable of compliance with court-ordered requirements, there will be instances in which this will not be the case. Therefore, the district attorneys' offices must be prepared to respond as they would not have had to do if the offender was incarcerated or on probation.

5.What is recommended to improve the procedures for imposing and enforcing these sentencing alternatives? PL 265, referenced above, is an effort to improve these procedures. Given its very recent implementation, it is not possible at determine its effect. It is anticipated that this recent change in statute will increase support among district attorneys for recommending these alternative sentences. This support will translate into their greater use. As the courts, district attorneys, and defense attorneys gain greater familiarity with these alternatives, they may either be utilized more or modifications can be proposed. The issue of a lack of formal supervision of these offenders will remain a primary concern for some judges and district attorneys. The initial bill was enacted with the acknowledgement that responsibility for ensuring compliance with the terms of the alternative sentences would shift from probation and parole officers to either the district attorneys or the courts. However, this additional burden cannot be absorbed by these entities. The result is inconsistent attention to compliance. Additional resources would have to be allocated to the district attorneys' offices to address this. Resources should also be allocated for a longitudinal study of the impact of alternative sentences, particularly in regards to recidivism. Over time, it will become possible to better assess these alternatives and determine what, if any, improvements should be made.

Respectfully submitted by Hartwell Dowling, Diversion and Rehabilitation Coordinator, Judicial Branch.