

To: Commission to Examine Reestablishing Parole
From: Legislative Staff
Date: November 22, 2022
Re: Findings and Recommendations Discussed at the Fourth Meeting

At the end of our fourth commission meeting on November 16th, the chairs asked that legislative staff compile a list of the top-line findings and recommendations that were covered in the commission's discussion at that meeting. The commission's discussion at the fourth meeting covered a wide range of issues relevant to parole and the commission's duties as set out in its establishing legislation, PL 2021, Chapter 126. The list requested by the chairs is provided below. It is based on the review of our notes and meeting footage, and has been edited based on input from the chairs prior to providing it to the entire commission.

As discussed at our fourth meeting, the duties set out in the commission's establishing legislation are as follows:

Sec. 5. Duties. Resolved: That the commission shall examine parole as it currently operates in this State and in other states, with a specific focus on the parole law in Colorado, the benefits and drawbacks of parole, different models of parole, how parole fits in with the overall framework of the Maine Criminal Code, the effect of parole on parolees, the costs and savings of instituting parole and the elements of a plan to implement parole.

The list below will begin with findings, which are statements of factual agreement, followed by recommendations directly responsive to the duties described above.

This document is meant to guide the commission's work at its final meeting on November 29th, 2022. The findings and recommendations below are not in their final form. Additional findings and recommendations may also be discussed at that meeting. The final versions of the findings and recommendations to be included in the report will be determined by votes taken by the commission members at that meeting.

Findings

- **Disparities in the racial demographics between those incarcerated in Maine and the general population of the State are staggering.** The disparities are clearly represented in the Maine Department of Corrections Year-End Adult Data Reports from 2021 and 2020. Those disparities intersect with racial disparities in sentence lengths that negatively impact equal access to existing programs like the Supervised Community Confinement Program. The disparities in access to the Supervised Community Confinement Program, as compared to the total prison population in Maine, can be seen in the Maine Department of Corrections Monthly Data Reports for the year 2022.
- **Violent crime is ultimately a public health issue and can be cyclical in nature.** The circumstances that lead a person to commit a violent crime create similar circumstances for the victims of that crime, which can then lead to victims committing a violent crime in the future. This is why a majority of people who are incarcerated are also survivors of violent crimes themselves, and why it is crucial that the criminal justice system focuses on providing both rehabilitation for offenders and support services for victims.
- **The success of any program established to address disparities in the criminal justice system will depend on ensuring adequate resources are available for offenders, victims, and communities to support people in rehabilitation, restorative justice, and avoiding interactions with the criminal justice system in the first place.** In order for the programs to succeed, the Legislature must allocate adequate funding to support these resources.

- **The success of any program established to address disparities in the criminal justice system will also require that the Legislature carefully consider reforms to other components of the criminal justice system, as no one component stands in isolation.** For example, the Legislature will have to carefully consider reforms to mandatory fines and penalties, mandatory minimum sentences, and criminal sentencing in-general.

Recommendations

Based on the findings provided above and the work conducted by the commission over the course of five meetings, the commission provides the following broad recommendations that the Legislature should carefully consider when developing any legislative proposal to reestablish parole in Maine.

1. **Carefully consider the types of sentences that may be eligible for parole.** The commission recommends that the Legislature begins with a further examination of LD 842 and all its accompanying papers from the First Regular Session of the 130th Legislature (Appendix ____). That bill would have made all criminal sentences for imprisonment eligible for parole. Some commission members expressed concern about making parole available to all sentences and suggested that the Legislature carefully consider excluding certain types of sentences, such as repeat offenders in cases of child sexual exploitation.
2. **Include specific criteria to evaluate when a person may become eligible for a parole hearing and for granting parole.** The Legislature must establish criteria that ensures parole is available to incarcerated people serving sentences of more than 20 years. This recommendation remains key to effectively addressing the disparate demographics identified in the findings of this report and providing hope to those serving long sentences. The criteria used to determine hearing eligibility and for granting parole must consider and mitigate the historical bias present in traditional risk assessment models. For incarcerated people suffering from diagnosed mental illness, the criteria must include metrics based upon the progress of their treatment.

Additionally, calculations of eligibility for a parole hearing should be based solely upon the unsuspended portion of that person's sentence. For example, if a person is sentenced to 20 years unsuspended and 20 years suspended, for a total sentence of 40 years, that person's eligibility for a parole hearing would be calculated on the time that remains on only the unsuspended portion of that person's sentence.

3. **Create a parole hearing, review, and appeals process conducted by a parole board independent of the Maine Department of Corrections, and comprised of members representing a diverse set of backgrounds and qualifications who are appointed to staggered terms subject to confirmation by the Senate.** A proposed amendment to LD 842 from the First Regular Session of the 130th Legislature (Appendix____) provides a starting point for the makeup of parole board members. Members of this commission also put forward their own recommendations for the makeup of the parole board, found in Appendix _____. The hearing, review, and appeals process must provide an outline of each step and provide each applicant for parole with the right to legal representation throughout the process.
4. **Ensure that victims have a right to be involved in the parole hearing, review, and appeals process.** The commission received comprehensive presentations during its second meeting from organizations that work in the field of victims' rights. (Appendices ____ to ____). The Maine Coalition Against Sexual

Assault outlined several policy considerations the commission feels are absolutely essential to include in any legislative proposal to reestablish parole. (Appendix ____)

- **Provide baseline funding for the Maine Criminal Justice Sentencing Institute.** Under Title 4, Section 454, the Maine Criminal Justice Sentencing Institute was created “to provide a continuing forum for the regular discussion of the most appropriate methods of sentencing convicted offenders and adjudicated juveniles by judges in the criminal justice system, prosecutors, law enforcement and correctional personnel, representatives of advisory and advocacy groups and such representatives of the defense bar as the Chief Justice of the Supreme Judicial Court may invite.” When sufficient funding is provided by the Legislature “the institute shall meet, at the call of the Chief Justice of the Supreme Judicial Court, for a 2-day period to discuss recommendations for changes in the sentencing authority and policies of the State's criminal and juvenile courts, in response to current law enforcement problems and the available alternatives for criminal and juvenile rehabilitation within the State's correctional system.”

The commission believes that the Maine Criminal Justice Sentencing Institute is an ideal forum to consider the reforms to criminal sentencing addressed in its findings above and recommends that the Legislature appropriate baseline funding in the biennial budget necessary for the institute to meet every two years. The commission further recommends that the Legislature amend the Maine Criminal Justice Sentencing Institute statute to improve the language and syntax of the text for clarity; codify more specifically the Institute’s processes or procedures, including requirements for public notice, public input, and a biennial report to the Legislature; and to direct the appointment of participants with a broader set of experiences, including those with expertise in sentencing reform and restorative justice.

- **Enhance and amend existing programs to assist in achieving the goals of reestablishing parole.** Many commission members expressed concerns that existing aspects of the criminal justice system will likely need updating to properly function alongside parole. Some members have also discussed the potential for pre-existing programs to be modified in order to achieve many of the goals advanced by proponents of parole. In particular, some members recommended considering modifications to Supervised Community Confinement that create eligibility for those serving longer sentences sooner than is currently provided for under the program. As touched upon in the commission’s findings, no component of the criminal justice system stands in isolation of the others. Any proposal to reestablish parole must consider how it will function in concert with Supervised Community Confinement, probation, or other programs.