State of Maine
121st Legislature
Second Regular Session

Report of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners

Part 1: Immediate Needs

January 2004

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Acknowledgements

The Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners submits this report to the Maine Legislature's joint standing committee having jurisdiction over sentencing policies in accordance with P.L. 2003, Chapter 451, Section K-2 (6). The Legislature granted the Commission authority to introduce legislation as part of its report. Legislation will be provided to the committee separately.

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Rosemary Kooy, Maine Department of Corrections
Linda LaPlante, State Planning Office
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Tony Van Den Bossche, State Planning Office

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This report was written by: Headwaters Writing & Design, Camden, Maine

For information on the Commission including meeting minutes, reports and studies, and news articles, visit the Commission's Web site at www.maine.gov/spo/sp/commission.

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I. Executive Summary

This report presents the findings and recommendations of the Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners. Created by the 121st Legislature in summer 2003 to address the urgent problem of a rapidly growing population in Maine's prisons and jails, the Commission was asked to study the issue from multiple perspectives and make recommendations to the Legislature.

Maine faces a severe prisoner population problem. The number of inmates incarcerated in state prisons and county jails has grown far beyond expectations in recent years, stressing the capacity of existing facilities and showing no sign of slowing down. Since 2000, the inmate population in the state prison system has jumped by 20 percent, faster than any other state, while the county jails grew 8 percent annually. The consequences of this phenomenal growth are dire: bed shortages, increasing risks to inmates and staff, and skyrocketing costs. In a time of fiscal constraints, the increasing demand for corrections services is placing greater demands on state and county budgets. The result is that the expenditures needed to support the growing numbers of inmates are outstripping our ability to pay for them.

While Maine's incarceration rate has risen dramatically, the crime rate has been waning since the 1990s. Analysis suggests that more offenders are going to jail because of current sentencing practices, a lack of diversion and community transition programs, and inadequate treatment programs for substance abuse and mental illness. If this trend continues, the costs will be enormous—not only the fiscal demands of the burgeoning prison and jails, but the social costs of incarcerating so many people.

The Legislature outlined five specific goals for the Commission to achieve:

1. Reduce the overall prison population in both state and county facilities, with a focus on lowering the population of nonviolent offenders;

2. Reduce the overall cost of the corrections system;

3. Accomplish policy, program and structural improvements that reduce recidivism and improve the transition of prisoners back into the community;

4. Preserve community safety; and

5. Respect the needs of victims and communities in the process of holding offenders accountable for their actions.

The Commission was asked to develop recommendations that address the factors leading to prison overcrowding, the impact of current sentencing laws, the use of alternate

sentences, and means to reduce recidivism, in particular that caused by mental illness and substance abuse.

The Commission studied the crisis using several methods. Data supplied by the state Department of Corrections and the counties was analyzed. Research included consultations with correctional experts with a wide knowledge of practices throughout the country. The Commission also encouraged and carefully considered input from the public, victims, inmates, and correctional employees. Six full meetings of the Commission were held between September 4, 2003, and January 23, 2004. All meetings were open to the public, and a wide range of stakeholders was invited to present information. On November 21, 2003 a public hearing was held in which the public had an opportunity to address the Commission directly. Agendas, minutes, and all materials presented to the Commission were posted on a dedicated section of the State Planning Office web site. In order to more effectively study particular facets of the corrections issue and arrive at specific recommendations, the Commission established four subcommittees: Diversion and Community Alternatives, Reentry and Community Transition, Sentencing, and Immediate Alternatives.

We found that no single factor is responsible for overcrowding in Maine's prisons and jails, but rather a combination of policies and circumstances are at work. In many cases different distinct factors overlap and interact with each other, often exacerbating the problem. An effective, long-term solution will therefore need to involve coordinated strategies designed not to resolve discrete, isolated factors but an interrelated set of patterns and phenomena underlying the overcrowding dilemma. The following factors were found to be the primary causes of overcrowding:

1. longer probation sentences and more probation violations
2. increase in drug-related convictions and inadequate substance abuse treatment programs
3. inadequate intervention/prevention programs for juveniles
4. inadequate reentry programs
5. change in sentencing laws and practices
6. shortage of appropriate treatment options for the mentally ill

The Commission established a set of guidelines to serve as the foundation beneath successful solutions. Recommendations were based on these guidelines, as well as "What Works" research and successful practices from other states. In the course of analyzing the current crisis and considering responses, we concluded that a fundamental change in how people think about the criminal justice system is crucial. Rather than emphasizing incarceration as the means of preserving public safety, we need to emphasize alternative modes of accountability for nonviolent offenders, provide adequate treatment to the mentally-ill and those with substance abuse problems, and most importantly prevent

people (particularly juveniles) from entering the criminal justice system in the first place. While incarceration is clearly necessary to protect society from violent individuals, in many cases jail or prison is an ineffective and extraordinarily expensive option for handling low-risk offenders.

The 61 recommendations presented in Section VI of this report (page 36) represent an integrated set of strategies for alleviating Maine's correctional crisis. They cover a wide range of issues, from emergency measures providing urgently-needed bed space right now, to adjustments of sentencing, rehabilitation, and diversion practices in Maine's criminal justice system.

The Commission recommends **an emergency appropriation to open 112 beds** at the Maine State Prison, the Maine Correctional Facility, and the Charleston Correctional Facility. Options to transport prisoners to be boarded in New Hampshire were rejected after considerable public comment opposed to this.

In addition, recognizing the severe pressure on the state's probation system, eight measures seek to **reduce the number of offenders sentenced to probation**. Probation sentencing is well-intentioned, designed to provide people with needed supervision, services, and treatment, but caseloads approaching 200 per probation officer are crushing the system and the officers within it.

The Commission recommends increasing the amount of good time prisoners can earn as an **incentive for them to participate in work, education, and rehabilitation programs**. Again testimony from the public, some heartbreaking, convinced the Commission to exclude offenders having committed gross sexual assault and murder from earning any additional good time.

We also recommend a **moratorium on enhancements to any of Maine's sentencing laws** until actions to alleviate overcrowding can begin to take affect. In recommending the moratorium, the Commission recognized the hard work of the Commission to Improve Community Safety and Sex Offender Accountability and believes that their recommendations should be exempted from the proposed moratorium. This commission was created by the Legislature to recommend changes to current laws governing sex offenders. The two commissions worked simultaneously with distinct missions, but communicated throughout.

The recommendations are organized under the following nine categories:

1. Probation Caseload/Community Corrections
2. Good Time
3. Sentencing
4. Adult Diversion

5. Juvenile Diversion

6. Mental Health

7. Immediate and Emergency Needs

8. County Jails

9. Deferred for Further Study

Maine's prisons and county jails are at a critical juncture. Prisoners are triple- and quadruple-bunked in cells. Tensions are high. Attacks and injuries are on the rise. Costs are spiraling upwards. The state must act now to alleviate these potentially disastrous situations.

At the same time, the Commission understands the state's fiscal problems. There is no extra money to spend on new programs and services. Because of these irreconcilable challenges, the Commission determined to present only the no-cost, low-cost, or most essential recommendations in legislation that accompanies this report. While worthy and, in some cases, critical to reducing inmate populations and cutting state and county costs, the other recommendations will be held to present with legislation to the 122nd Legislature. While all the recommendations appear in the Commission's report, only a portion of them will be presented now for consideration by the Second Regular Session of the 121st Legislature.

Given the scope of work assigned, the limited number of official commission meetings authorized, and the relatively short time frame, the Commission was faced with a most demanding workload. While we attained significant results, the commission members have volunteered to capitalize on their accomplishments to date and, if authorized by the Legislature, to build on this momentum. The Commission earnestly hopes that the Legislature will extend its charge so that we can pursue several key issues that remain, including:

- factors leading to juvenile incarceration

- diversion programs and treatment needs of adult and juvenile offenders, especially those with substance abuse and mental health illnesses

- improvements in the delivery of mental health services within the criminal justice system

- proposals for developing and operating regional jail facilities

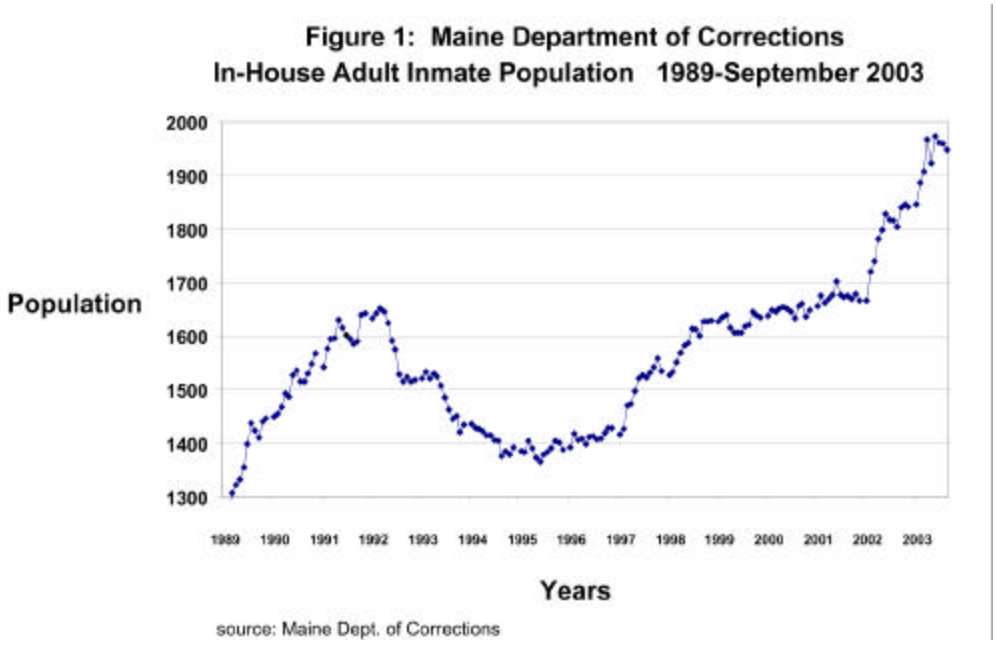
We would like to emphasize that after studying the prisoner population crisis in depth, it became clear that there is no one "magic bullet" solution to this complex problem. Rather, a successful solution will require an array of integrated adjustments in policies, practices, and established outlooks within Maine's criminal justice system. It also became

apparent that permanent, long-term solutions will require significant investments whose returns may be years away. A particular recommendation, for example, may not necessarily yield instantaneous results but offers significant future benefits. While the prospect of allocating scarce resources to the correctional crisis during this time of fiscal constraint is difficult, the alternatives—to do nothing or to implement a budget-driven "quick fix"—are far worse in the long term, for the taxpayers of Maine will end up paying a vastly higher price if the current trend continues.

II. Introduction

The Problem

Maine faces a severe prisoner population problem. Since 2000, the number of inmates held in the state prison system has jumped by 20 percent—the fastest growth of any state in the nation. Similarly, the incarcerated population in county jails is growing by an average rate of 8 percent annually. The unexpected explosion in the number of inmates constitutes a crisis that threatens to spiral out of control if left unchecked. Maine's prisons and jails are struggling with bed shortages, skyrocketing costs, and increasing risks to inmates and staff, with the situation deteriorating year by year. The new Maine State Prison in Warren, originally projected to reach capacity in 2010, is already full.

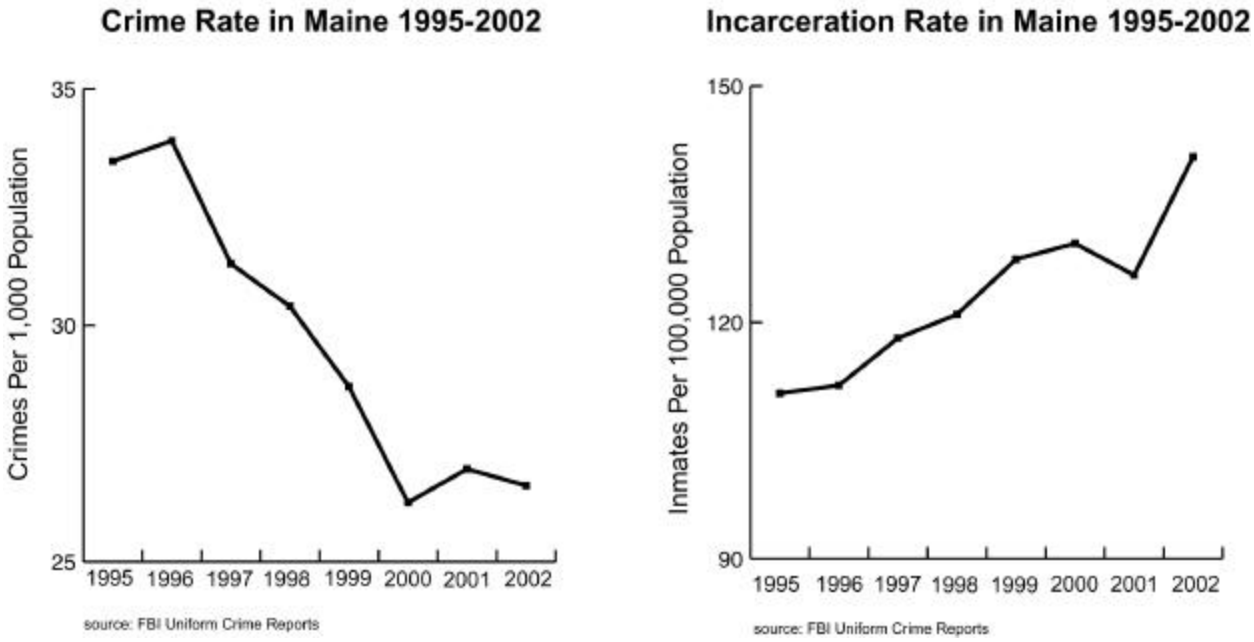


The consequences of this phenomenal growth are dire. In a time of enormous fiscal constraints, the state and counties are seeing their prison and jail expenses steadily escalate (taxpayers in Knox County, for example, will pay 25% more in 2004 than they did in 2003 to operate the county jail). Overcrowding adds more wear and tear on existing facilities, boosting maintenance costs. Constant overwork and difficult conditions are sapping the morale of prison staff. Inmates are increasingly likely to suffer from inadequate treatment programs, exhibit violence toward themselves and the staff, and even die—between 1998 and 2002, 18 inmates perished in Maine prisons and jails.

While Maine's incarceration rate has risen dramatically in recent years, the crime rate has been waning since the 1990s. Preliminary analyses suggest that more people are going to jail because of current sentencing practices, rising recidivism, and inadequate treatment programs for substance abuse and mental illness. If this trend continues, the costs will be

enormous—not only the fiscal demands of the burgeoning prison and jails, but the social costs of incarcerating so many people.

Figure 2



Commission Formation

The 121st Legislature responded to the corrections crisis in early 2003 by calling for a broad-based study commission. The "Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners" was charged with examining the prison population problem from multiple perspectives and formulating recommendations to alleviate the dilemma. Seventeen members of the Commission were appointed by the Governor, Speaker of the House, President of the Senate, and the Chief Justice (Appendix A). The Commission was asked to submit its recommendations to the joint standing committee of the Legislature having jurisdiction over sentencing policies during the Second Regular Session of the 121st Legislature. Governor Baldacci appointed former Corrections Commissioner Don Allen as chair. The 17-member commission was formally launched in September, 2003.

Commission Goals

The Legislature outlined five specific goals for the Commission to achieve (Appendix B):

1. Reduce the overall prison population in both state and county facilities, with a focus on lowering the population of nonviolent offenders;

2. Reduce the overall cost of the corrections system;

3. Accomplish policy, program and structural improvements that reduce recidivism and improve the transition of prisoners back into the community;

4. Preserve community safety; and

5. Respect the needs of victims and communities in the process of holding offenders accountable for their actions.

In the interest of helping the Commission accomplish the five goals above, the Legislature recommended that the Commission examine multiple strategies, "including diversion from jail or prison, programming to improve reentry from jail or prison back to the community, community alternatives to incarceration and changes in sentencing laws, policies, and practices." Finally, the Commission was asked to do the following:

1. Study factors leading to overcrowding in state and county correctional facilities; examine and analyze the prison population and projected growth at both the state and county level to include offenses, length of sentence and other issues such as mental illness and substance abuse, which lead to incarceration or re-incarceration; and identify trends in the offender population and determine what impact these changes will have on future growth;

2. Examine factors linking juvenile and adult offender populations;

3. Review existing program and treatment levels for the incarcerated offender population and recommend improvements based on projected need and effective programs supported by research; and

4. Consult with and seek input from former inmates as well as from organizations advocating for the mentally ill.

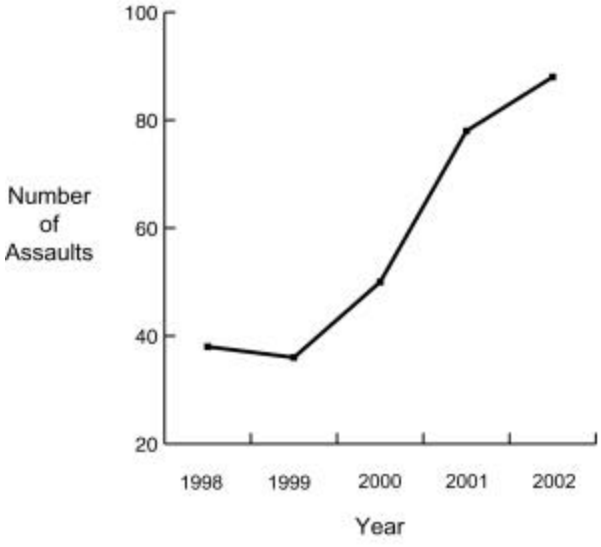
III. Background

Overcrowding

As Maine's prison population has skyrocketed in recent years, state and county facilities have been pushed to their limits—and sometimes beyond. The Department of Corrections reports that the state prison system is now 150 prisoners over capacity and growing. The ranks of prisoners in county facilities are now growing at an average of 8% annually. Ten counties now have between them 207 more prisoners than they have beds. Because finding bed space has become such a priority, officials are sometimes compelled to move prisoners to wherever there are available beds, regardless of a prisoner's condition, residence, or particular needs.

Overcrowding has also contributed to a recent upswing in violence. State prisons are reporting more assaults directed at other inmates as well as prison staff. The nature of these assaults is becoming increasingly violent, sometimes involving weapons such as knives. More and more inmates are trying to get into protective custody and out of the general population. Officials fear that if the overcrowding gets worse, the risk of a prison riot grows significant (a 2001 riot in York County Jail was attributed in part to overcrowded conditions). Suicides appear to be on the rise among inmates in county jails. Although much of the problem stems from inadequate treatment programs for inmates at risk for suicide, inadequate supervision and more stressful environments due to overcrowding are certainly factors in this trend.

Figure 3: Maine Dept. of Corrections
Assult-Related Staff Injuries
1998-2002



source: Maine Dept. of Corrections

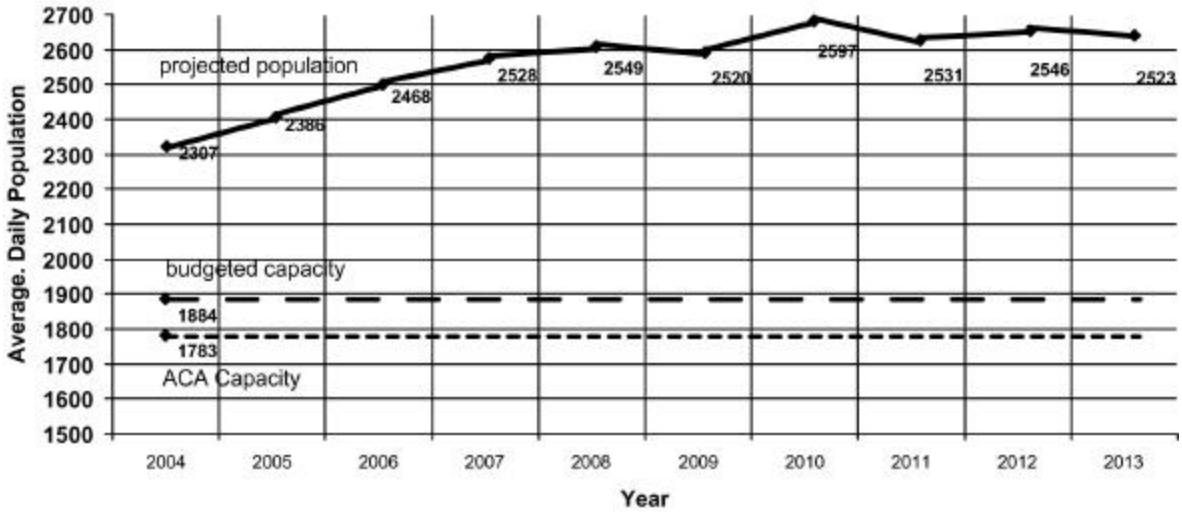
Other consequences of overcrowding include increased wear and tear on facilities and a rising risk of litigation. Wear and tear diminishes the quality of the facilities and places an excessive burden on the state or counties who must conduct more expensive and frequent maintenance. With the decline in general conditions in the prisons and jails comes a greater possibility of litigation. In the event that a prisoner is harmed, families or advocacy groups may initiate expensive legal proceedings against the state or county—or a class action consent decree could be placed on the state mandating a facility(ies) that meets national standards.

Finally, overcrowded facilities severely strain staff. We heard from several employee representatives that prison guards are called in to work mandatory overtime, often having to stay on duty after having already worked a full shift. They pass up sleep, miss family events, and are forced to leave childrearing and household tasks to others. Dedicated probation officers take calls or make home inspections at all hours of the day and night and struggle under crushing caseloads that average over 200 per officer. In many instances, morale is low and tensions are high.

Projected Growth

According to Department of Corrections' calculations, inmate numbers will reach 2,367 in 2004, 2,386 in 2005, and will exceed 2,500 by 2007. These projections are based on admission and release records, a method that has proven accurate in the past. The existing system cannot contain this number of inmates. State prison facilities in total have the capacity to house just under 1900 inmates.

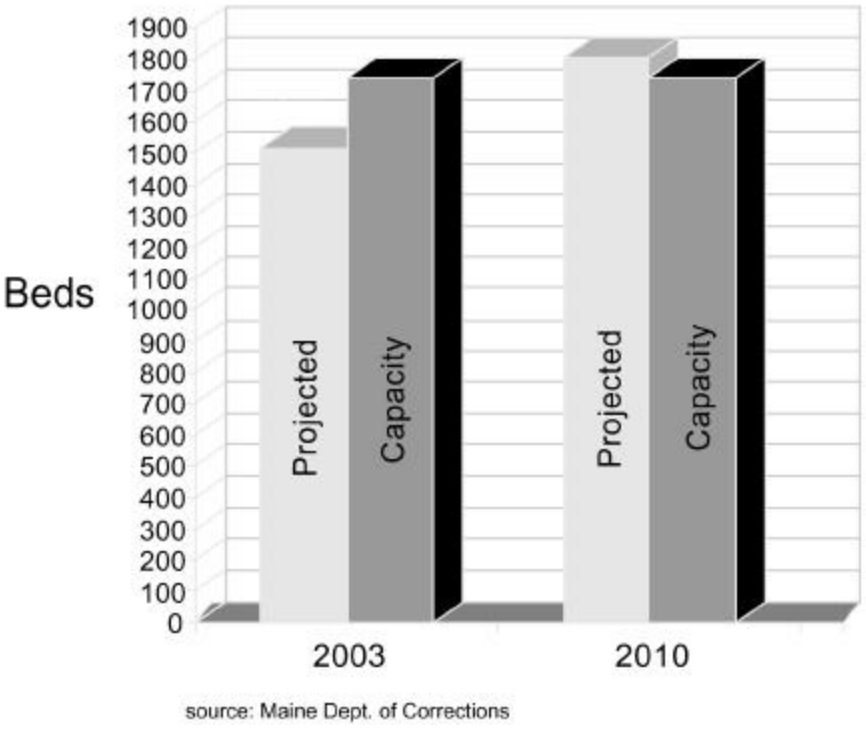
Figure 4: Maine Prison Population Projections Compared to Budgeted and ACA Capacity



source: Maine Department of Corrections and American Corrections Association

County jail projections indicate a population of over 1800 by 2010. Assuming the current bed shortage is alleviated by transporting prisoners from overcrowded county facilities to facilities in other counties with space (an inefficient and expensive practice), the county jail system will be short 66 beds in 2010.

Figure 5: Maine County Jail Projected Bed Space Need & Capacity Year 2010



source: Maine Dept. of Corrections

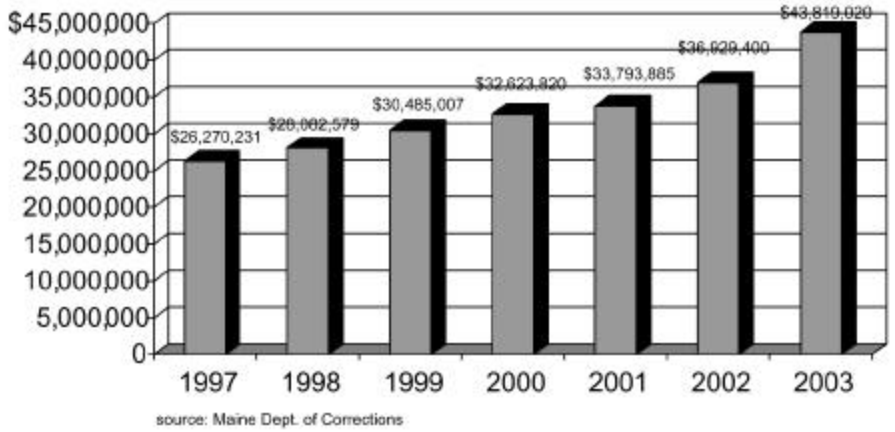
Female inmate populations in Maine, while a relatively small portion of the total incarcerated population, have grown significantly in recent years. The incarceration rate for women in Maine rose sharply in 2002—from 8 to 12 per 100,000 population, a 52.5% increase.

Costs

Not surprisingly, the increase in prison population places a significant financial burden on taxpayers. According to data from the Department of Corrections, in 2003 it cost an average of $33,623 to keep one inmate in the state prison system. Combined state and local spending in Maine for corrections in 2003 was $123 million, according to U.S. Bureau of Justice statistics. 75% of this was spent on state corrections, the remaining 25% on county. Compared to other states, Maine's per capita spending on corrections is

low (Maine is the fourth lowest of all the states). However, today's severe fiscal constraints at both the state and county levels and the current economic conditions make the rising costs of corrections a serious problem.

Figure 6: Maine County Jail Cost 1997-2003



As Maine's state corrections budget has increased, there have also been changes to where the money is allocated. Funding for adult services is proportionally less, while juvenile services now take a bigger portion of the pie. The cost of medical services has also grown significantly. These figures do not include funds necessary to build new facilities or accomplish major renovations of the existing system. The department is currently not funded adequately to house the current prisoner population and, if the projected growth continues unabated, significant budget increases will be necessary.

There are also social costs involved in incarcerating more of the population, particularly non-violent, low-risk offenders. Some of them have families who depend on the individual for support. While it makes sense to incarcerate violent individuals who pose a threat to public safety, an increasing portion of prisoners are non-violent offenders who—with the proper services and community support—have the potential to be productive members of society.

Recidivism

According to a 2003 study by the Muskie School, 81% of Maine's prisoners in state facilities have prior convictions. More than half (55%) of those inmates with prior convictions have more than six priors. 31% has more than 10 priors.

While there is little automated data to calculate recidivism rates at county jails, sheriffs, and county jail administrators estimate similarly high rates of reoccurring criminal behavior at the county level. 81% of the inmates in state prisons have previously served jail time; 83% had previously been on probation, and almost a quarter (24%) had a prior

revocation of probation. Clearly many prisoners are having difficulty making a successful transition back into society.

Recidivism has many causes. A few offenders are truly deranged and habitual. Some simply see a night in the county jail as a place to get a hot meal and a warm bed. But many are unable to manage life's ups and downs due to poor self esteem, lack of education, addiction to alcohol or drugs, or mental illness. For many, repeat offenses are the direct result of the offender's social associations ("getting in with a bad crowd"). Reducing recidivism requires adequate and effective treatment programs and helping offenders make an effective transition back into society.

Research tells us that the way we treat offenders may even cause their reoccurring criminal behavior. Putting people with a low-risk of re-offending in prison or jail takes away their supports; they lose their jobs, their families, their associates. Upon release, they have nowhere or no one to return to and their risk of reoffending rises. Mingling low-risk offenders with high-risk offenders (in either incarceration or treatment programs) also could increase recidivism rates among low-risk offenders (they learn anti-social attitudes and behaviors). Therefore, sanctions must be targeted to the risk of the offender or else those sanctions may backfire by making recidivism more likely.

IV. Process and Methods

Meetings

The Commission held six full meetings between September 4, 2003, and January 23, 2004 (Appendix C). All meetings were open to the public. The Commission invited a wide range of stakeholders to present information at the meetings. On November 21 a public hearing was held in which the public had an opportunity to address the committee directly. Agendas, minutes, and all materials presented to the Commission were posted on a dedicated section of the State Planning Office web site (http://www.state.me.us/spo/sp/commission).

Decision-making and Voting

Recommendations were initially formulated by the subcommittees, each of which presented a set of recommendations to the entire Commission. Each individual recommendation was then discussed and affirmed by consensus. Where the Commission was unable to reach a consensus, resolutions were passed by majority vote.

Following the initial decision-making process, the Department of Corrections prepared cost estimates for each of the recommendations. The cost analysis included an annual estimate of what it would cost to implement each recommendation and the expected avoided costs over five years after its implementation.

The Commission revisited each recommendation in light of the cost information. It then voted or decided by consensus which recommendations to propose now to the 121st Legislature to address the immediate needs of the state prisons and county jails. Another series of recommendations will be further developed and the Commission intends to present these to the 122nd Legislature in January 2005.

Subcommittees

In order to more effectively study particular facets of the corrections issue and arrive at specific recommendations, the Commission Chair established four subcommittees. The chair did not appoint himself to a subcommittee, rather he participated with all the subcommittees. The subcommittees were:

1. **Diversion and Community Alternatives:** providing recommendations to divert people away from the criminal justice system and foster alternatives to incarceration *(members: Carol Carothers, Mark Dion, Evert Fowle, Steve Rowe [chair], Leigh Saufley; staff: Rosemary Kooy)*

2. **Reentry and Community Transition:** providing recommendations to improve the Reentry from jail or prison back to the community *(members: Mary Cathcart [chair], Bud Doughty, Carol Grose, Thomas Humphrey, Joseph Jabar; staff: Tony Van Den Bossche)*

3. **Sentencing:** providing recommendations for changes in sentencing laws, policies, and practices *(members: Donald Alexander, Andrew Benson, Neale Duffett, Denise Lord, Janet Mills, Robert Mullen, Ethan Strimling [chair]; staff: Jody Harris)*

4. **Immediate Alternatives:** providing recommendations to address immediate needs including safety, inmate deaths, housing crisis, and probation officers' caseload *(members: Elmer Berry, Kim Johnson [chair], Marty Magnusson, Diane Sleek, Mark Westrum; staff: Ralph Nichols)*

Each subcommittee had a chair person responsible for convening meetings, organizing and facilitating the subcommittee's work, and presenting recommendations to the full Commission. The subcommittees derived recommendations from their analysis of their assigned area using the following guidelines:

1. Lay out the strategic direction for the state, where do we want to be?

2. What major accomplishments need to happen to get there?

3. What immediate, significant steps can we take now?

4. What steps can we take over the next 1-2 years?

5. For recommended steps, how do they meet the statutory criteria as follows:

    a. The recommendation will reduce overcrowding

    b. The recommendation will produce efficiencies, including opportunities to consolidate or regionalize facilities or services

    c. The recommendation is guided by "what works" research to reduce recidivism

    d. The recommendation addresses recidivism caused by mental illness and substance abuse

    e. The recommendation respects the needs of victims and communities

    f. The recommendation preserves community safety

In keeping with the Commission's policy of facilitating public involvement, all subcommittee meetings were open to the public. At each subcommittee meeting, the Commission chair and members of other subcommittees were encouraged to participate. The subcommittees made decisions and arrived at final recommendations by reasonable consensus.

Research

The Commission researched corrections issues in several ways in order to better understand the problems and arrive at practical solutions. The research was directed toward four fundamental purposes:

1. Establish the magnitude and nature of the problem faced
2. Identify its causes
3. Examine how other states are handling similar problems to see what solutions have been effective elsewhere
4. Learn what practices and strategies are shown to be effective by empirical data

Research conducted by the Commission included the following:

- Examined state and national statistics on corrections and crime
- Reviewed the body of literature studying correctional practices
- Reviewed past reports to the Legislature on corrections issues
- Commissioned studies undertaken by outside consultants and experts (Appendix D)
- Requested reports prepared by corrections, judicial, and law enforcement officials in Maine
- Heard presentations by experts (Appendix E)
- Invited various stakeholders to present information at meetings, including:
    - Corrections officials and staff
    - Law enforcement officials
    - Judiciary officials

- Victims' rights advocates
- Probation officers and their bargaining representatives
- Former inmates
- Substance abuse rehabilitation providers
- National corrections and crime/justice organizations
- Providers of treatment for the mentally-ill

Public Input

The Commission encouraged public participation during the entire process. All meetings were publicized and open to the public, written comments were invited, and a public hearing was held on November 21 to provide people with an opportunity to address the Commission directly. 33 people testified at the public hearing (Appendix F). The Commission also received dozens of letters and e-mails from concerned citizens.

Victim Input

Because its recommendations will impact crime victims as well as offenders, the Commission felt it was extremely important to understand the perspective and concerns of victims. With the assistance of the Victims Services Coordinator at the Maine Department of Corrections, a coalition of victims' advocates addressed the Commission. The Commission heard presentations given by a murder victim's relative, a rape response service, a family crisis service, a victim witness advocate program, and the state's victim advocate. Through letters, e-mails, and the public hearing numerous crime victims conveyed their opinions to the Commission.

Inmate Input

The first-hand experiences of inmates offered a useful perspective on the correctional system. The Commission received letters from current and former inmates, while several former inmates also spoke at the public hearing. The Commission invited presentations by four inmates (only two appeared) to solicit input on improvements to the state's correctional system. Commission members also spoke to inmates directly when they toured the Maine Correctional Center in Windham, the Maine State Prison and Bolduc Unit in Warren, and the Cumberland and Kennebec county jails.

Employee Input

The Commission also heard directly from state corrections employees who will be affected by a number of its recommendations. The Commission invited labor

representatives from the Maine State Employees Association and the American Federation of State, County, and Municipal Employees (AFSCME) to provide an overview of staff issues. One probation officer and one prison facility director testified at the Commission's public hearing. Commission members saw first hand employee conditions as they toured facilities. In addition, separate meetings between groups of probation officers and Commission members were held in Hallowell and Augusta in November and December. Commission members were given the opportunity to spend time in the field with probation officers as well.

V. Findings

Factors Leading to Overcrowding

No single factor is responsible for overcrowding in Maine's prisons and jails, but rather a combination of policies and circumstances are at work. In many cases different distinct factors overlap and interact with each other, often exacerbating the problem. The increase in drug-related incarcerations, for example, typically brings people with substance-abuse problems into prisons and jails that lack adequate treatment programs. Consequently, many of these offenders quickly relapse when released, commit further offenses, and wind up back in jail where the cycle repeats. Any effective, long-term solutions will therefore need to involve coordinated strategies designed not to resolve discrete, isolated factors but an interrelated set of patterns and phenomena underlying the basic overcrowding dilemma.

The following factors were found to be the causes of overcrowding:

1. longer probation sentences and more probation violations
2. increase in drug-related convictions and inadequate substance abuse treatment programs
3. inadequate intervention/prevention programs for juveniles
4. inadequate reentry programs
5. change in sentencing laws and practices
6. shortage of appropriate treatment options for mentally-ill

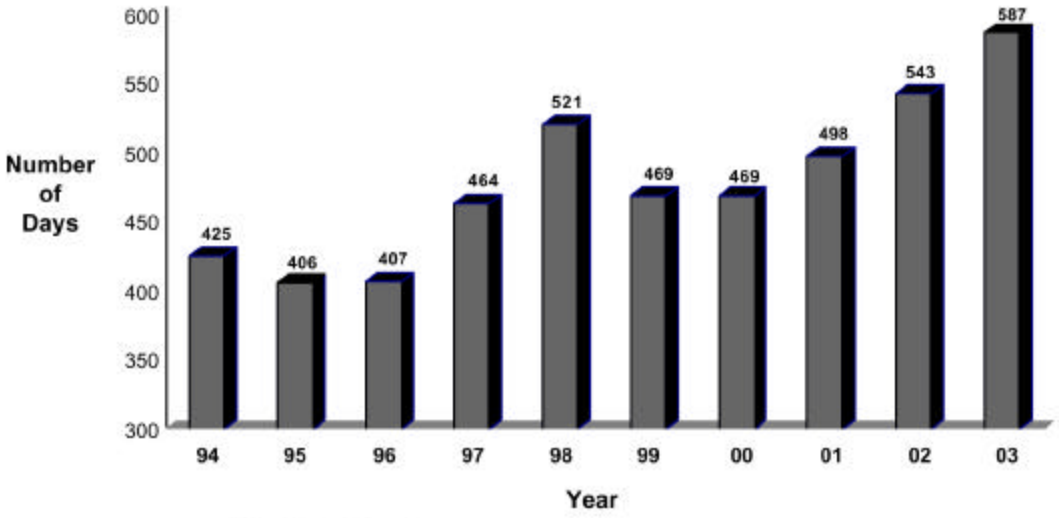
Current Practices and Their Effectiveness

1. Probation

The number of people on probation in Maine is rising quickly—in fact, the rate of increase is the fourth highest in the country. There are now over 9,377 people on probation in Maine (average daily population). The reason is not that more new offenders are being put on probation, since average annual intakes since 1994 have decreased 4%. Instead, the increase in probationers appears to be because offenders are remaining on probation for a longer time. The average length of stay on probation has increased by 38% since 1994. Probationers are also violating the terms of their probation more often—these violations have increased during the past decade by 32%. The majority of these violations are technical (55%) rather than new offenses (45%).

Of the existing current 9,377 probationers, over 5,400 are sentenced to probation for Class D and E offenses. About 29% of inmates in Maine's county jails are there as a result of probation revocations. The number of revocations to DOC alone is up over 400% since 1994. In 1994, split sentences (years served + probation) plus revocations of split sentences totaled only 47% of all commitments to DOC. In 2002, it was 80%. In addition, greater probation sentences are being imposed. The average years of probation per inmate for the top three crimes in Maine (sex offenses, burglary, and drug offenses) increased 79%, 230%, and 110% respectively from 1994-2002.

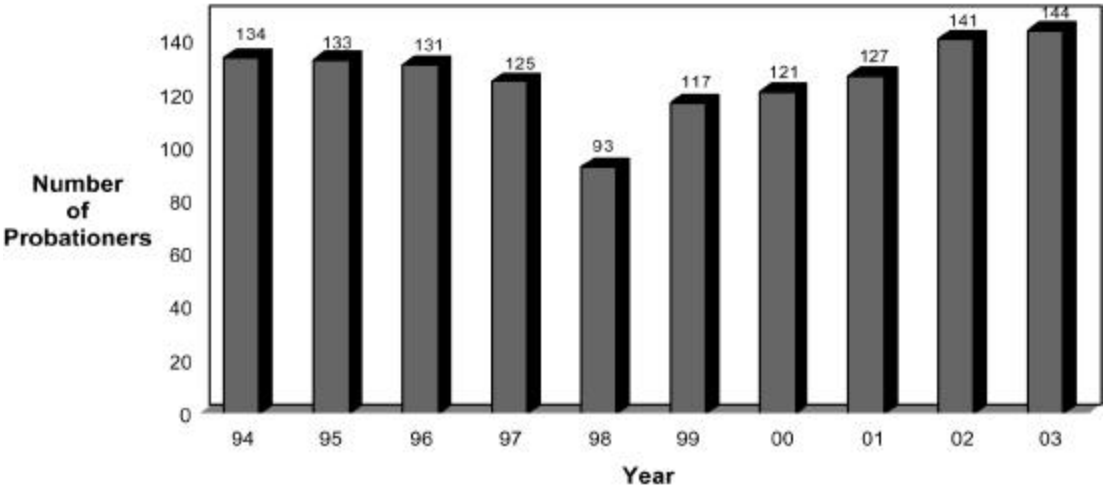
Figure 7: Maine Department of Corrections
Adult Community Services
Average Length of Stay on Probation
1994-2003



source: Maine Dept. of Corrections

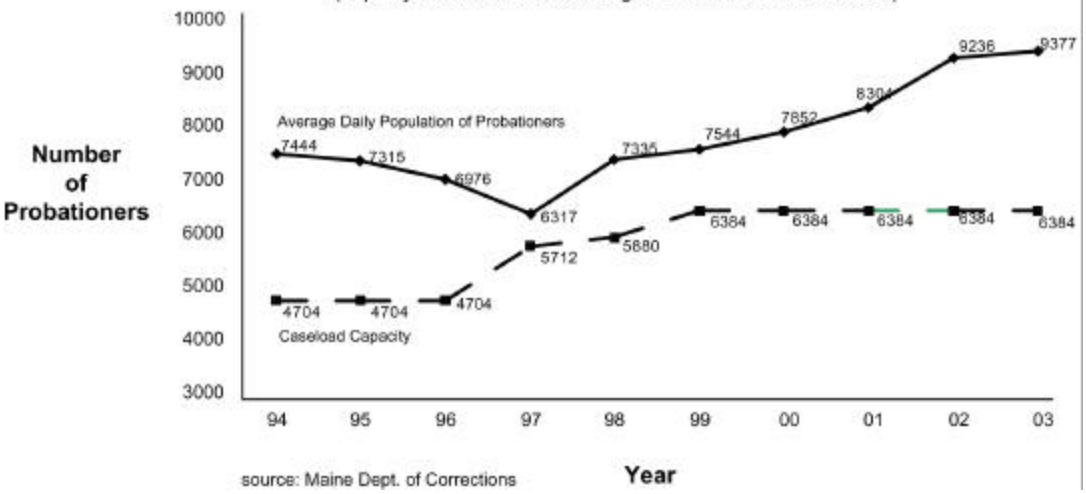
As the number of probationers has risen, the burden on probation officers has grown significantly. Caseloads have increased 23% since 2000, resulting in individual probation officers being responsible for an average of 144 probationers—and in some cases, as many as 200. The national average is 84, while 40 is optimal. The situation has been further aggravated by the reassignment of probation officers to special cases, reducing the number of officers available to supervise a regular caseload. This unquestionably makes it harder for probation officers to effectively keep track of probationers, which can result not only in more offenses but may also compromise public safety.

Figure 8: Adult Community Services
Annual Average Caseload
Probationers to One Probation Officer
1994-2003



source: Maine Dept. of Corrections

Figure 9: Maine Department of Corrections
Adult Community Services
Average number of Probationers & Caseload Capacity
1994-2003



source: Maine Dept. of Corrections

2. Drug-related Convictions and Substance Abuse Treatment

In 2002 “drug offenses” became the second leading category for state prison admissions. This was the result of a 150% increase in drug offender commitments between 2001 and

2002. Moreover, non-drug offenses are often directly or indirectly related to substance abuse—for example, a person with a substance-abuse problem may commit burglary to support a drug habit.

Substance abuse is a fundamental problem for Maine's prisons and county jails in at least three ways: first, many inmates wind up in prison either because they were convicted of drug-related offenses or because substance abuse was a contributing factor in the crime they committed; second, once in prison, inmates with substance-abuse habits require costly medical and therapeutic services; and third, in many cases substance-abusers not treated effectively will return to prison after being released. According to the National Association of Drug Court Professionals, putting a drug abuser in jail can cost as much as $50,000 annually. The capital cost of building a new prison cell can be as much as $80,000.

In 2002 "drug offenses" was the second leading category for DOC admissions. The trend since the 1990s of "tough" policies toward drug offenders, including mandatory minimum sentences for some offenses, has placed many more people with substance-abuse problems behind bars.

Comments from inmates and former inmates with substance abuse problems confirm what many studies show: jail time does not help people get off drugs (and in fact drugs are sometimes available in jail). The fortunate few who are released to treatment programs outside prison have the best chance of becoming clean and not recidivating. Former inmates at the Commission's public hearing suggested that not every substance abuser is suited to these programs, but those who are need a chance to enter an effective treatment program.

Maine currently has three treatment programs for dealing with the substance abuse problem in prison. All three operate within the same treatment model—the Differential Substance Abuse Treatment (DSAT) program. The three programs are: DSAT community providers, Drug Court, and the Key Maine Therapeutic Community Program and Transitional Treatment Program (TC-TTP). DSAT is a cognitive behavior treatment model that treats adult offenders in a group setting, separating participants in groups that target their level of addiction and criminality (men and women are treated separately). The program provides a continuum of comprehensive substance abuse treatment services to adult offenders in correctional and community settings across the state.

The Adult Drug Court was launched in April 2001 to stop criminal activity related to the abuse of alcohol and drugs, and to help participants rehabilitate through early, continuous, and intensive judicially-supervised substance abuse treatment and other appropriate rehabilitative services. Program participants plead guilty to a crime or to multiple crimes with the understanding that they are subject to two possible sentences. The first sentence is based upon their successful completion of their intensive Drug Court program. The second more severe sentence is imposed in the event they are terminated from the program. Over a 20-month period ending November 1, 2002, a total of 651

offenders were referred to Adult Drug Court. Of those, 208 were admitted, 61 were expelled, 34 successfully completed the program, and the rest have treatment pending.

Key Maine TC-TTP helps offenders gain control over their addiction in the last 12 months of their incarceration and make a successful transition to the community. After participating in TC for nine months, program graduates enter the TTP, which combines work release and drug treatment during the last three months of the inmate's incarceration. Inmates work on reentry planning with the TTP staff and are referred to community providers upon release from prison. Since 1999, when the program began, 74 male inmates have completed the program.

While a major cause of overcrowding in state prisons and county jails is inadequate programs to treat offenders with mental health illness, the Commission did not have time to adequately address these issues in its first report. The Commission intends to focus on mental health treatment for offenders in its supplemental report.

3. Juveniles

Juvenile offenders in Maine are often punished aggressively with incarceration, which statistics suggest puts them on track to become adult offenders who wind up in prison. Evidence also shows that delinquency in juveniles can be reduced through investments in parent education, early childhood prevention and intervention services, well-staffed child welfare systems, and adequate behavioral health services. According to a study done by the Muskie School of Public Service in 2003, 28% of the current incarcerated population in Maine also had juvenile offense records.

The Legislature specifically directed the Commission to examine the factors linking juvenile and adult offenders. This is a topic the Commission would like to study in-depth in its supplemental report—unfortunately, we did not have time to undertake this research prior to issuing this report.

4. Reentry Programs

The Department of Corrections has several coordinated programs in place to help with prisoner reentry, such as the Maine Reentry Network, a multi-system partnership of public and private organizations at the state, county and local levels working together to promote the successful transition of serious and violent offenders from correctional facilities back into their communities. Key program components include quality in-facility programs, Integrated Case Management System planning, seamless facility/community transition services, local sponsorship, and services for returning offenders.

County reentry and transitional programs are funded, in part, with state funds from the Community Corrections Act. Counties are required to spend 20% of funds distributed to them under the Community Corrections Act on community programs such as alternative sentencing, home release, electronic monitoring, etc. Inmates also help pay for services.

Counties run the services themselves or contract with organizations such as Maine Pre-Trial Services or Volunteers of America. Services include pre-trial services (guiding pre-trial defendants back into the community who may otherwise be incarcerated while awaiting trial), residential work release, day-reporting, home release, electronic monitoring, alternative sentencing, and educational programs.

For example, Androscoggin County runs an alternative sentencing program at local schools. Designed for OUI offenders or other non-violent, low-risk offenders, individuals with short sentences report to a local school gymnasiums (only during school vacations) where they live, eat, sleep, and participate in treatment programs such as substance abuse or anger management programs.

5. Sentencing Laws and Practices

Part of the "get tough on crime" approach beginning in the 1990s has been to pass mandatory minimum sentencing laws and to reclassify many crimes as more serious offenses (Appendix G). Both of these trends have contributed significantly to the overcrowding in Maine's prisons and jails. Mandatory minimums increase the prison population in two ways—they lead to convicted offenders spending more time behind bars and they prevent judges from using alternatives to incarceration for certain nonviolent offenders. According to several justices and judges, sometimes a sentence required by law can be completely inappropriate in a particular case.

Research suggests that the primary reason the women's incarceration rate is rising so quickly in Maine (in 2002 alone it jumped over 52%) is because of mandatory minimum sentencing laws, particularly concerning drugs, the largest offense category for women prisoners in Maine.

The trend toward reclassifying crimes has generally resulted in longer and more severe sentences. Since 1982, the total number of Class A, B, C, D and E crimes in Maine has increased 97% (148 to 292). In 1982, 36% of the Class A, B, C, D and E crimes were felonies. In 2002, 53% were felonies.

Figure 10: Changes in Length of Sentences in Maine 1982-2002

1982	2002
Class A 0 to 20	0-40
Class B 0 to 10	Same as 1982
Class C 0 to 5	Same as 1982
Class D 0 to 364 days	Same as 1982
Class E 0 to 6 months	Same as 1982
If crime was committed with the use of a dangerous weapon: Increase one class	Same as 1982
If crime was committed with the use of firearm: Increase one class and impose: Class A 4 year minimum mandatory Class B 2 year minimum mandatory Class C 1 year minimum mandatory	Same as 1982
No such provision	If new crime is a crime of violence and the defendant has 2 prior convictions for crimes of violence: Increase one class
No such provision	If new crime is Gross Sexual Assault and the defendant has a prior serious sexual assault conviction: Class A – Any term of years, with 4 year minimum mandatory Class B – Any term of years, with 2 year minimum mandatory Class C – Any term of years, with 1 year minimum mandatory
No such provision	If new crime is an aggravated drug crime: Class A – 4 years minimum mandatory Class B – 2 years minimum mandatory Class C – 1 year minimum mandatory
No such provision	If new crime is aggravated attempted murder Class A – Up to Life

Source: Neale Duffett, Sentencing Subcommittee

With bed space and programs short in many of Maine's county jails, it appears that more offenders are receiving sentences greater than nine months (sentences of less than nine months are served in a county jail). This has resulted in a significant rise in prisoners at the state level serving relatively short sentences of nine to 18 months. One reason county jails are beyond capacity is because of the greater number of prisoners being held while awaiting trial.

In 1995, in response to Federal Truth in Sentencing Legislation designed to ensure that the amount of time offenders serve reflects the sentence they receive in court, Maine decreased the amount of good time inmates could be awarded from 15 days a month to 5 days a month. In addition, good time now has to be earned (for good behavior or work) rather than being granted automatically upon entry into prison. The reduction in good time was intended largely to address the needs of crime victims and concern by the public—ensuring that offenders are held fully accountable for their actions by serving all (or most of) the sentence they receive for their offense.

This change has played a role in the rise of Maine's incarcerated population. For example, an offender sentenced to 20 years in prison in 1994, before the good time change occurred, would on average serve 12 years time. The same offender receiving the same sentence today would likely serve over 17 years. Currently, inmates can earn five days per month as follows:

1. Two days per month for good behavior

2. Up to three days per month for participating in assigned work programs (internal and external to the prison or jail facility; prorated based on the quality of their conduct)

Good time is partly used as a behavior management tool within the prisons—misbehavior is punished with a loss of good time. Approximately 35% of inmates earn the full 3-days for participating in work programs. 75% of inmates earn the full 2-days per month for good behavior. The Commission found indications, however, that there is not enough time involved in the current good time policy to provide much leverage as a punishment. Simultaneously, good time as it's now structured offers little incentive to inmates to get an educational degree or successfully complete a treatment or rehabilitation program. Moreover, many offenders, even the most violent ones, are released from prison after having served their sentence without having participated in any kind of treatment or rehabilitative program.

Figure 11: Sentences and Average Actual Time Served Before and After Changes to Good Time Policy

Sentence Imposed	Actual Time Served Prior to 1995 Years– Months	Actual Time Served Since 1995 Years- Months
Life	Life	Life
75	43-2	64-4
70	40-4	60-0
65	37-5	55-8
60	34-6	51-6
55	31-7	47-2
50	28-10	42-11
45	25-11	38-7
40	23-0	34-4
35	20-2	30-0
30	17-3	25-9
25	14-5	21-5
20	12-0	17-2
19	11-7	16-3
18	11-0	15-5
17	10-4	14-7
16	9-9	13-9
15	9-1	12-10
14	8-6	12-0
13	7-11	11-2
12	7-4	10-3
11	6-8	9-5
10	6-1	8-7
9	5-1	7-8
8	4-10	6-10
7	4-3	6-0
6	3-8	5-1
5	3-0	4-3
4	2-5	3-5
3	1-10	2-7
2	1-2	1-8
1	0-7	0-10

Source: Neale Duffett, Sentencing Subcommittee

6. Lack of Appropriate Treatment Options for Mentally Ill

Unfortunately, a large number of mentally-ill patients end up in Maine's prisons and jails. This problem is not unique to Maine—nationally, over 16% of inmates in state prisons and local jails are mentally ill, according to Department of Justice estimates. In Maine at least 25% of inmates are reported to be in mental health therapy or counseling programs. Nationally, correctional facilities now house eight times more people with mental illness than state psychiatric facilities. Among states, Maine has the fourth highest rate of prisoners receiving mental health counseling (one in four) and the fifth highest rate of prisoners receiving psychotropic medications (one in five).

According to most experts who've studied the topic, putting mentally-ill people in jail is generally harmful to the person incarcerated and simultaneously costs a good deal more money than appropriate treatment. In many cases the condition of mentally-ill inmates deteriorates while in prison and they may leave the institution in worse condition than when they were admitted—with the added burden of having no medical insurance, no job, no home, and no financial resources. The result is that the individual usually winds up back in prison, perpetuating a destructive cycle. Mentally-ill inmates are also more at risk of death in prison, often of suicide.

In 2001 the State Legislature formed a commission to study this problem, and the commission found that the cause lies largely in the lack of adequate community health services. While there are some cases where mentally-ill people pose a threat to public safety and may therefore need to be incarcerated, too often they end up in jail by default because the treatment services they need are not available. Another reason is that substance abuse is common among the mentally-ill, which can lead to drug related offenses, erratic behavior, or homelessness and panhandling. In some cases jail serves as a housing of last resort, where mentally-ill persons exposed to the elements are booked for minor infractions and placed in jail because there is no other place to take them.

In theory, mentally-ill inmates are supposed to receive appropriate treatment, but in fact many don't. Half of Maine's jails indicate they cannot access psychiatric hospital beds. According to the Department of Corrections, the demand for services within the prison system outweighs the department's resources. The costs of pharmacy alone have increased by more than 50% in three years. According to the Disability Rights Center, many potentially suicidal inmates won't tell jail staff about their "suicidal thoughts" because they fear they will be stripped and placed in solitary confinement—a common practice in some jails. In 1998, 21 states were under certified class-action lawsuits involving the issue of inadequate mental health services for inmates.

In addition to the effect on the person, this pattern also has negative impacts on society. A person whose mental illness is adequately treated, on the other hand, may become a productive citizen—a much more desirable result for the individual and society.

In 2002 The National Association of the Mentally Ill (NAMI) in Maine obtained funding to start a Crisis Intervention Team (CIT) in Portland. In short, CIT is designed to help divert mentally-ill persons from prison by training police officers to better understand and communicate with mentally-ill persons. In cities where this program has been implemented, arrests of and injuries to people with mental illness have dropped significantly. NAMI hopes to expand the program to other cities in Maine, but funding is uncertain.

Guidelines to a New Approach

The Commission established a set of guidelines to serve as the foundation beneath successful solutions to the problems discussed in this report. Recommendations were based on these guidelines, as well as "What Works" research and successful practices

from other states. In the course of analyzing the current crisis and considering responses, it became clear that a fundamental change in how people think about the criminal justice system is crucial.

Guiding Principles

Mission

In partnership with the citizens of Maine, the criminal justice system promotes public safety, changes offender behaviors, ensures offender accountability, addresses the needs of victims, repairs the harms done, and deters future criminal conduct.

Principles

We believe:

1. That public safety and respect for individual and community are basic elements of a free society.

2. That people can change.

3. That community participation and support are essential for the successful delivery of criminal justice.

4. That victims have the right to have an active role in determining how their needs can best be met.

5. That offenders are responsible, to the extent possible, to repair harm done to victims and the community.

We also believe in:

6. The inherent worth and dignity of all individuals.

7. Treating people with respect and dignity.

8. Teamwork and the process of continuous improvement.

9. Professional self-improvement.

10. The placement of offenders in the least restrictive environment consistent with public safety and offense severity.

11. Fairness throughout all decision making.

12. Respect for the liberty interest, rights, and entitlements of the individual.

13. Individual empowerment.

14. Non-violent conflict resolution.

15. Maintaining a safe and secure environment.

16. The value of individual, cultural, and racial diversity.

Four Components of a Criminal Justice System

The criminal justice system is a continuum that starts with an offender's initial arrest and proceeds through the court and corrections systems. At each juncture of this continuum, there are opportunities for impacting prisoner population, costs, recidivism, community safety, and needs of victims.

1. Law Enforcement
2. Prosecution
3. Judicial Process
4. Corrections Functions

1. The Functions of Law Enforcement are:

a. Deter crime through community presence and respect

b. Investigate and document reported crimes

c. Gather evidence

d. Initiate charges against offenders

e. Provide testimony in court

2. The Functions of Prosecution are:

a. Represent the best interests of the public in all investigations and prosecutions

b. Respect the needs of victims

3. The Functions of Judicial Process are:

a. Provide fair and impartial forums for the resolution of individual cases

b. Protect the legal rights of offenders

c. Give fair consideration to the interests of victims, witnesses and others who appear before the courts

d. Divert appropriate offenders from corrections

e. Sentence appropriate offenders to corrections

4. The Functions of Corrections are:

a. Monitor offenders on community supervision (probation)

b. Monitor and restrain offenders who are incarcerated

c. Provide appropriate services to offenders

d. Facilitate the transition of incarcerated offenders back into society at the completion of their sentences

"What Works" Principle

Correctional agencies use the term "What Works" to refer to a set of research-based principles and practices underlying effective approaches to criminal justice. The general idea behind "What Works" is that successful correctional practices are grounded in empirical data and research—that is, practices that evidence shows are effective in changing behavior—rather than tradition, intuition, or purely speculative theories. From the "What Works" perspective, correctional agencies should base their policies and programs on principles that can be demonstrated to actually achieve the intended goals. It may sound like common sense, but many current practices have either never been thoroughly evaluated for effectiveness or, in some cases, have actually been shown to be counter productive.

The Commission's work was informed by the "What Works" principle in order to ensure that the recommendations offered would alleviate the incarceration rate while simultaneously promoting public safety and inmate rehabilitation.

Evidence suggests that appropriate treatment is more likely to reduce recidivism than criminal sanctions. "What Works" is based on four principles of effective intervention:

1. **Risk Principle:** Intervention should target higher risk offenders. Intensive treatment for lower risk offenders can increase recidivism.

2. **Need Principle**: Intervention should target criminogenic risk factors. If you target those factors that are most closely associated with criminal behavior, you will have better effects in reducing recidivism. These factors include:

    - anti-social attitudes, values, and beliefs, and cognitive emotional states (criminal thinking);

    - pro-criminal associates and isolation from pro-social associates;

    - certain temperament and behavioral characteristics (e.g., egocentrism, weak problem-solving and self-regulation skills);

    - criminal history;

    - familial factors (i.e., low levels of affection and cohesiveness, poor parental supervision and discipline practices, and outright neglect and abuse;

- low levels of personal, vocational and educational achievement;

- substance abuse

3. **Responsivity Principle**: Intervention should match styles and modes of treatment to the learning styles and abilities of the offender.
4. **Treatment Principle**: Intervention should be based on social learning or cognitive behavioral approaches. Social learning involves modeling new skills and behavior while cognitive behavioral approaches focus on changing thoughts that lead to criminal behavior and includes strategies such as cognitive self control, anger management, social perspective taking, moral reasoning, social problem-solving, and attitudinal change.

In short, "What Works" posits that public safety and offender change are accomplished through an integrated system of sanctions and interventions appropriately targeted to the risk and needs of the offender. A "What Works" environment means that everyone who has anything to do directly or indirectly with an offender, from entry into the system to completion, is consistently focused on assisting that person to be successful.

An understanding of "What Works" led commission members to the following key conclusions upon which to judge their recommendations:

- Criminal sanctions alone (not accompanied by appropriate treatment programs) will not reduce recidivism (in fact, in some cases, sanctions will increase recidivism)

- Mingling low-risk offenders with high-risk offenders (in either incarceration or treatment programs) actually increases recidivism rates among low-risk offenders

- Non-behavioral treatment approaches are not only ineffective, but could actually increase recidivism. These include:

    - Correctional boot camps using traditional type military training

    - Drug prevention classes focused on fear or other emotional appeals

    - D.A.R.E

    - School-based, leisure-time enrichment programs

    - "Scared Straight" juveniles visit adult prisons

    - "Shock" probation

    - Spilt sentences, adding time to probation

    - Home detention with electronic monitoring

- Intensive supervision (control oriented)
- Rehabilitation programs using unstructured counseling
- Residential programs for juveniles using challenging experiences in rural settings

Successful Strategies from Other States

The Commission received a report from nationally-recognized corrections expert Edward Latessa outlining some of the "best practices" employed by other states facing similar overcrowding issues. Latessa's report presents a survey of what specific policies and programs have proven effective at minimizing incarceration rates or appear to promise results. After examining incarceration rate trends over the past several years, Latessa identified 12 states as potential models. Additional states were also included in the study because they are developing and implementing interventions likely to result in lower incarceration rates, even though such results have not yet materialized. The best policies aimed at reducing incarceration rates include sentencing schemes and programmatic intervention.

Sentencing Schemes:

1. Repealing mandatory minimums
2. Reclassification of offenses regarding automatic prison sentences
3. Shortening sentences
4. Creating sentencing guidelines that keep prison populations within set limits
5. Simulation models
6. Early warning systems

Programmatic Interventions:

1. Implementing risk and need assessment throughout the system
2. Developing a continuum of community corrections sanctions and treatment programs
3. Enhancing training in clinical areas (*e.g.*, cognitive behavioral interventions, assessment)
4. Expanding drug treatment for drug offenders diverted from prison

5. Developing Reentry programs

6. Attending to quality assurance through accreditation and technical support

VI. Recommendations

The Commission offers the following 61 specific recommendations designed to alleviate the problems discussed in this report.

Decision-making and Voting

Recommendations were initially formulated by four subcommittees, each of which presented a set of recommendations to the entire Commission (Appendix H). Each individual recommendation was then discussed and affirmed by consensus. Where the Commission was unable to reach a consensus, resolutions were passed by majority vote (Appendix I). While not all Commission members agreed with all the recommendations, there was a thorough vetting of all the issues. Commission members agree that their views were heard and fully considered and that the process was fair. Minority views are a part of this report (Appendix J).

Legislation

The Legislature granted the Commission the authority to introduce legislation to the Second Regular Session of the 121st Legislature at the time of submission of its report (PL 2003, c. 451, §K-2, sub-§6). The Commission's proposed legislation appears in the Section VII of this report.

Investment and Impact

We would like to emphasize that in the course of studying the prisoner population crisis in depth, it became clear that there is no one "magic bullet" solution to this complex problem. Rather, a successful solution will require an array of integrated adjustments in policies, practices, and established outlooks within Maine's criminal justice system. It also became apparent that permanent, long-term solutions will necessitate significant investments whose returns may be years away. A particular recommendation, for example, may not necessarily yield instantaneous results but offers instead significant future benefits. While the prospect of allocating scarce resources to the correctional crisis during this time of fiscal constraint is difficult, the alternatives—to do nothing or to implement a budget-driven "quick fix"—are far worse in the long term, for the taxpayers of Maine will end up paying a vastly higher price.

Immediate vs. Long-term Solutions

Maine's prisons and county jails are at a critical juncture. Prisoners are triple- and quadruple-bunked in cells. Tensions are high. Attacks and injuries are on the rise. Costs

are spiraling upwards. The state must act now to alleviate these potentially disastrous situations.

At the same time, the Commission understands the state's fiscal problems. There is no extra money to spend on new programs and services. Because of these irreconcilable challenges, the Commission determined to present only the no-cost, low-cost, or most essential recommendations in legislation that accompanies this report. While worthy and, in some cases, critical to reducing inmate populations and cutting state and county costs, the other recommendations will be held to present with legislation to the 122nd Legislature. While all the recommendations appear in the Commission's report, only a portion of them will be presented for consideration by the Second Regular Session of the 121st Legislature. Each recommendation below is identified according to whether it will be proposed to the 121st Legislature (now) or the 122nd Legislature (in 2005).

Given the scope of work assigned, the limited number of official Commission meetings authorized, and the relatively short time frame, the Commission was faced with a most demanding workload. While significant results were achieved, the Commission members have volunteered to capitalize on their accomplishments to date and, if authorized by the Legislature, to build on this momentum. A final set of recommendations at the end of this report are designated "Deferred for Further Study." The Commission earnestly hopes that the Legislature will extend the Commission's charge so that we can pursue those recommendations further. Therefore, our first recommendation is below:

1. **Extend the Commission's charge:** Extend the charge of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners through January 1, 2005 to allow the Commission to address the outstanding issues identified in this report. *(121st Legislature)*

All subsequent recommendations are organized into nine categories:

1. Probation Caseload/Community Corrections
2. Good Time
3. Sentencing
4. Adult Diversion
5. Juvenile Diversion
6. Mental Health
7. Immediate and Emergency Needs
8. County Jails
9. Deferred for Further Study

1. Probation Caseload/Community Corrections

2. **Limit the use of probation:** Limit the use of probation for Class D&E offenses to domestic violence, sex offenders, repeat OUI offenders (1 or more prior convictions in the previous 10 years), and other unusual cases where serious risk to public safety exists as determined by the court. *(Immediate 1) (121st Legislature)*

3. **Create deferred disposition:** Enact a new sentencing alternative to give judges an alternative punishment to probation or incarceration (i.e. the only alternative to probation now is incarceration). We suggest that this intermediate punishment be called "Deferred Disposition" and include requirements such as paying restitution, performing community service work, completing treatment plans, completing GED/educational goals, and completing employment goals. Procedurally, the defendant would plead guilty, the judge would continue the case without a finding of guilt until a date certain, the defendant would provide proof of compliance to the District Attorney, and, on the date certain, the judge would impose an unconditional discharge pursuant to 17-A MRSA §1346 or the District Attorney may dismiss without a conviction. If the defendant is not in compliance, the judge would proceed to sentencing with incarceration and/or probation as available sanctions. *(Immediate 2, Sentencing17, Diversion 3) (121st Legislature)*

4. **Allow "Administrative Release" from probation:** Revise the statutes to create a new sentencing option, "administrative release," that allows the court to "sentence" Class D & E offenders to an un-supervised, non-probation option where appropriate. This option will require some form of accountability (e.g., fines, restitution, or community service) that must be fulfilled and reported back to the court before the case is closed. Allow probation officers to immediately move to convert existing probationers to administrative release status. *(Diversion 3) (121st Legislature)*

5. **Reduce probation sentences:** Revise Maine's sentencing laws to reduce the length of time an offender can be sentenced to probation to:

   Class A – 4 years

   Class B – 3 years

   Class C – 2 years

   Class D – 1 year

   Class E – 1 year

The current length for sexual offenders would not be changed. *(Immediate 3, Sentencing 16) (121st Legislature)*

6. **Maximize early termination of probation:** Encourage probation officers to make maximum utilization of existing law for early termination of probation for those offenders who have met all goals and requirements of probation and are deemed to be a low risk.

   Have each probation officer review their caseloads to identify and proceed with cases appropriate for early termination. In those cases where there is a difference of opinion between the Probation Officer and District Attorney on early termination, the case should still proceed to the court for a final determination on the petition. The application for early termination will include the reasons for recommending early termination and victim notification. Judges and prosecutors are urged to give deference to said applications.

   Additionally, the Legislature should clarify the policy to help ensure uniform practices in each court for reviewing early termination petitions. *(Immediate 4, Sentencing 19) (121st Legislature)*

7. **Authorize county work crews:** (only if the liability and supervisory issues can be satisfactorily worked out) Allow a judge to sentence probation violators to up to 90 days of County Work Crew (if the local jail has such a program for inmates). The probationer goes home at night. *(Sentencing 18) (121st Legislature)*

8. **Encourage supervised community confinement participation:** Create additional incentives to encourage more low-risk offenders to participate in Supervised Community Confinement and transitional programming. Increased utilization of these programs for low-risk offenders will make additional minimum-security bed space available and improve Reentry programs for inmates. Participation in Supervised Community Confinement also provides the added benefit of a period of supervision in the community for those prisoners who will not be on probation once released from prison. *(Immediate 7) (121st Legislature)*

9. **Create resource coordinators:** Create two resource coordinator positions to support the Reentry network for high-risk offenders and to support expansion of Supervised Community Confinement statewide. These positions need to have cross system training and education. The Department of Corrections will investigate the most cost effective way to create these positions. (*Reentry 2*) *(121st Legislature)*

2. Good Time

10. **Increase good time limits in county facilities:** Increase the amount of good behavior good time inmates in county facilities can earn from two days per month to four. *(Sentencing 8a) (121st Legislature)**

11. **Increase good time limits in state facilities:** Increase the amount of good behavior good time inmates in state facilities can earn from two days per month to four, excluding gross sexual assault and murder. *(Sentencing 8b) (121st Legislature)**

12. **Increase WERC time limits:** Increase the amount of WERC time inmates in state facilities can earn from three days per month to five. (*Sentencing 14*) *(121st Legislature)**[1]

13. **Create new good time category:** Create a new category of good time called "Work, Education, and Rehabilitation Credits" (WERC) to more accurately reflect the program's intent. *(Sentencing 10) (121st Legislature)*

14. **Expand WERC time:** Expand the programs and activities in which inmates can participate to earn WERC time to include education programs (GED, professional certificate, technical/vocational certification, post-secondary degree), work programs (including community work programs), behavioral change programs (consistent with "what works") such as sex offender treatment and substance abuse programs (AA, substance abuse, etc.). (*Sentencing 11*) *(121st Legislature)*

15. **Require transition case plan for WERC time:** Require inmates to have and follow a transition case plan in order to earn WERC time. (*Sentencing 12*) *(121st Legislature)*

16. **Factor participation quality into WERC time benefits:** Prorate WERC time to reflect the quality of the inmate's participation (i.e. they show up on time, they show up every day for which they are assigned work, their work performance is adequate). In addition, inmates will only be able to earn the maximum amount of WERC time for work credits at the end of their sentence (based on their transition plan) for participation in community-based work programs. (*Sentencing 13*) *(121st Legislature)*

17. **Allow good time while in jail awaiting sentencing:** Provide for inmates to earn the same amount of good time while awaiting trial and sentencing. (*Sentencing 9*) *(121st Legislature)*

[1] Should all of these good time provisions be enacted, the total number of good times days that could be earned increases from five to nine days per month in state facilities and five to seven days in county jails.

3. Sentencing

18. **Permit judicial discretion on mandatory minimum sentences:** Provide judges the discretion to deviate from required mandatory minimum sentences in cases with extraordinary circumstances. In deviating from the mandatory minimum sentence, the presiding justice shall consider all relevant factors, including:

    - The nature of the criminal act;
    - The defendant's prior record or lack thereof;
    - The recommendations of the victim or the victim's family and the prosecuting attorney;
    - The defendant's prospects for rehabilitation, credible demonstration of remorse and a comprehension of the consequences of the defendant's actions; and
    - The age, background, and physical and mental condition of the defendant, the defendant's family circumstances, and whether the criminal act was an isolated aberration in the life of the defendant.

    (Sentencing 1) (121st Legislature)

19. **Place moratorium on sentencing increases:** Impose a one-year moratorium on any amendments to the state's criminal code that would increase sentences imposed, increase classification of sentences, or change classification on inmates until an impact study can be accomplished to determine the impact (including costs) of sentences on inmate population, and a study of sentencing ranges with a prospect of increased differentiation within ranges, and other actions can be taken to alleviate the current overcrowding crisis faced in state prisons and county jails. Exempt the sentencing recommendations from the Commission to Improve Community Safety and Sex Offender Accountability. *(Sentencing 2) (121st Legislature)*

20. **Reduce auto theft to Class D:** Amend the state criminal code to change Burglary of a Motor Vehicle from a Class C to a Class D crime. *(Sentencing 3) (121st Legislature)*

21. **Increase minimum values of stolen property used to classify theft crimes:** Amend the state criminal code to change standards for theft as follows:

    - The value of the property is more than $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime (currently Class C begins at $1,000)

- The value of the property is more than $1,000 but not more than $3,000. Violation of this subparagraph is a Class D crime (currently Class D begins at $500)

(Sentencing 4) (121st Legislature)

22. **Reduce certain supervised community confinement violations from felony to misdemeanor:** Amend the state criminal code to make it a misdemeanor (Class D) if an inmate fails to appear for work, for school or for a meeting with that person's supervising officer while an inmate is on Supervised Community Confinement, rather than a felony (Class C). The subcommittee believes this may be one reason that inmates do not participate in SCC. (*Sentencing 5) (121st Legislature)*

23. **Require victim notification:** Require that every victim be notified of the Department of Corrections' toll-free telephone number to call to learn of the earliest possible projected release date of their perpetrator (if someone were to earn all possible time from their first day of sentence). In addition, when the department's web-based public access portal comes on line in an estimated two years, every victim will be notified of how they can go on-line and look at the earliest possible projected release dates of everyone in the state corrections system. *(Sentencing 15) (121st Legislature)*

24. **Pilot risk assessment process in sentencing:** The Department of Corrections working with judges, district attorneys, prosecutors, law enforcement officials, and pre-trial services should pilot a risk assessment process into sentencing practices. (*Sentencing 21, Diversion 4*) *(122nd Legislature)*

4. Adult Diversion

25. **Expand effective diversion programs:** Expand Maine's Crisis Intervention Team (CIT) programs and other evidence-based diversion models to additional municipalities. CIT is an evidence-based pre-booking diversion model which uses specially-trained police officers to diffuse psychiatric emergencies in the community. The expansion should be based on a needs assessment of the volume of police responses to psychiatric, domestic violence, and substance abuse emergency calls. The Department of Behavioral and Developmental Services crisis team data should be used to identify high volume. These areas should have specialized emergency room procedures accommodate law enforcement officers who opt to bring a client to the ER instead of to jail. *(Diversion 1) (122nd Legislature)*

26. **Train dispatchers to recognize psychiatric calls:** Provide training to dispatchers (Houston and Florida models) to recognize psychiatric calls and to respond appropriately. *(Diversion 2) (121st Legislature)*

27. **Support effective risk assessment tools:** Provide financial resources so that the LSI or other valid and reliable risk assessment tools may be administered in appropriate cases as early in the criminal justice system as is possible, but at a minimum prior to sentencing. *(Diversion 5) (122nd Legislature)*

28. **Create community corrections boards:** Recommend the creation of Community Corrections Boards, administered by the sheriffs. These boards should include representatives from multiple stakeholders (to include victims, advocates, prosecutors, defense attorneys, and local law enforcement). Their charge should be to assist the sheriffs to develop and market alternative community corrections programs, including looking at "day reporting" as a sentencing option. *(Diversion 7) (121st Legislature)*

29. **Form county-level community restitution centers:** Encourage sheriffs to operate "community restitution centers," similar to current work release programs, which would allow inmates to work, obtain treatment, and complete their sentences in settings other than the jail. *(Diversion 8) (121st Legislature)*

30. **Place diversion programs under Adult Drug Court Coordinator:** Expand the responsibilities of the Adult Drug Court Coordinator within the Judicial Branch to include all criminal diversion programs. *(Diversion 9) (121st Legislature)*

31. **Create "boundary spanners:"** Create interdepartmental, interjurisdictional "boundary spanner" positions in each of the state's eight prosecutorial districts. A boundary spanner is a person who a) possesses strong communication skills and a keen understanding and appreciation of all criminal justice, behavioral health, and substance abuse treatment programs in the State; (b) helps to bridge the barriers between systems, and (c) serves as an information conduit and coordinator to identify and assist individuals eligible for programs. *(Diversion 10) (122nd Legislature)*

32. **Divert appropriate probation violators into community-based diversion services:** Create a system to screen, assess, and divert those found eligible and charged with probation violations into a community-based continuum of services. Such services would seek to divert the probationer from a more lengthy court proceeding and future jail or prison term. There would not be a special docket created. Community safety, risk assessment, and immediate availability of services would be paramount. Successful completion to the diversion plan could result in a dismissal of a motion to revoke probation with the agreement of the prosecutor. The program will include the following components:

    - 150 probation clients to be targeted for services in each location

- Rapid screening, assessment and placement of clients into the program
- Two locations: Cumberland County-Penobscot/Hancock counties, with Kennebec County as a potential third location
- Resource Center and Day Reporting facility
- Probation Supervision
- Drug and Alcohol Testing
- Education, Job, and Vocational Services
- Referral to existing effective treatment programs
- Judicial review and monitoring
- Program data management system

(Diversion 13) (122nd Legislature)

33. **Maintain the Research and Evaluation Council:** Maintain the Research and Evaluation Council to coordinate on-going research and evaluation of existing programs and the development of more blueprint programs. Perform ongoing analysis of recidivism data, population, and program needs. Encourage the council to report annually so that council studies can be used to make data-based decisions about funding and programs. *(Diversion 26) (121st Legislature)*

34. **Develop confidentiality training:** Require the departments of Corrections, Behavioral and Developmental Services, Human Services, and Education to develop joint training on confidentiality issues and how to share information appropriately within existing law. *(Diversion 28) (121st Legislature)*

35. **Rely more on community programs as sentencing option:** Have the courts, prosecutors, department, and county jails support and make greater utilization of existing community programs such as Drug Court, substance-abuse treatment, day reporting, and public service as an alternative to incarceration. A greater utilization of these programs will help to ensure the availability of jail and prison capacity for higher risk offenders who pose a greater risk to the public. *(Immediate 12, Sentencing 22) (121st Legislature)*

5. Juvenile Diversion

36. **Create Community Assessment Center:** Develop and pilot a Community Assessment Center (CAC) that combines assessment, advocacy, and direct service to high-risk offenders to divert appropriate juveniles from incarceration. CACs provide a 24-hour centralized point of intake and assessment for juveniles who have come into contact with the juvenile justice system. *(Diversion 14) (122nd Legislature)*

37. **Rely more on family-oriented and home-based services for youth offenders:** Expand intensive family-oriented and home-based services such as Multi-systemic Therapy (MST) and Functional Family Therapy (FFT), for delinquent youth as an alternative to incarceration, standard probation, and placement into residential treatment centers or group homes. Multi-systematic Therapy is an intensive family- and community-based treatment that addresses the multiple determinants of serious antisocial behavior in juvenile offenders. Functional Family Therapy is an outcome-driven prevention/intervention program for youth who have demonstrated the entire range of maladaptive, acting out behaviors and related syndromes. The US Department of Justice's Office of Juvenile Justice and Delinquency Prevention selected both MST and FFT as Blueprint programs for violence prevention. Each program costs less than $5,000 per young person. *(Diversion 15) (122nd Legislature)*

38. **Establish short-term foster care for nonviolent youth offenders:** Establish short-term treatment foster care with counseling and parent management training for parents as an alternative to incarceration or group home placements for chronic but not dangerous youth offenders. Multi-dimensional Treatment Foster Care is also a Blueprint Program that has dramatically reduced recidivism. Require that existing foster care services adopt this model. *(Diversion 16) (122nd Legislature)*

39. **Expand wraparound planning model:** Expand the wraparound planning model for adolescents with serious emotional disturbances. *(Diversion 17) (122nd Legislature)*

40. **Support and fund Blueprint juvenile mentoring programs.** *(Diversion 18) (122nd Legislature)*

41. **Support early childhood prevention and intervention programs:** Support and adequately fund proven, effective early childhood prevention and intervention programs. Existing programs such as home visits (beginning during pregnancy), parenting education, and quality childcare should be expanded to ensure access by all families who need them. *(Diversion 19) (122nd Legislature)*

42. **Support Blueprint prevention program:** Support and fund Blueprint prevention program such as the Incredible Years Series. The Incredible Years Series is a set of three comprehensive, multi-faceted, and developmentally-based curriculums for parents, teachers, and children designed to promote emotional and social competence and to prevent, reduce, and treat behavior and emotion problems in young children. *(Diversion 20) (122nd Legislature)*

43. **Educate stakeholders on "What Works":** Offer training and education for prosecutors, law enforcement officers, defense attorneys, judges, victim groups, and other stakeholders on the "What Works" literature. *(Diversion 21) (121st Legislature)*

44. **Improve information sharing among agencies:** Require appropriate state agencies (e.g. BIS, McJustice, DHS, BDS, Education) to analyze state and county management information systems with the objective of increasing the compatibility of systems and the sharing of information among agencies. *(Diversion 23) (122nd Legislature)*

45. **Create diversion directory:** Establish a printed and web-based directory of resources and diversion alternatives. (*Diversion 24*) *(122nd Legislature)*

46. **Review programs to ensure effectiveness:** Establish a review process for publicly-funded programs serving youthful and adult offenders to assist programs in their efforts to incorporate standards based on the principles of effective correctional intervention whose standards are reviewed against nationally-accepted standards. (*Diversion 25*) *(122nd Legislature)*

6. Mental Health

47. **Develop plan to address mental illness:** Require BDS, DOC, and county sheriffs to develop a joint plan of action to address mental illness in the criminal justice community and to prevent inmate deaths. The plan will be brought back to this Commission before the end of Second Regular Session. If the Commission is not extended, require the departments to proceed administratively. (*Immediate 14*) *(121st Legislature)*

7. Immediate and Emergency Needs

48. **Open additional bed spaces:** Appropriate emergency funds to increase the Department of Correction's adult facilities budgeted capacity to provide some relief for overcrowded conditions and correctional staff working overtime at these state facilities. This would be accomplished by opening vacant units at the Maine Correctional Center (30 beds), and the Charleston Correctional Facility (50 beds). Bed space would be increased at the Maine State Prison in

Warren by adding 32 beds to its medium security unit. *(Immediate 5) (121st Legislature)*

8. County Jails

49. **Develop a county bed space database:** With the opening of the new York County jail (and new Sagadahoc jail), and a surplus of bed space at Cumberland, bed space is available for those ten counties with overcrowding problems. The problem faced by these ten counties is locating where surplus beds are available. The Maine Sheriffs' Association, Maine County Commissioners' Association, and Maine Department of Corrections Inspection Division should develop a centralized statewide system of reporting available bed space on a daily basis that provides a single point these ten counties could contact to located available beds. One possibility would be to maintain the central data base of available bed space on the Maine Sheriffs' Association website. *(Immediate 6) (121st Legislature)*

50. **Reward counties that use Community Corrections Act funds for diversion programs:** Funds should be allocated to provide a financial incentive to those counties who demonstrate a greater utilization of Community Corrections Act (CCA) funds for community correction programs such as diversion, alternative sentencing, day report, home release, electronic monitoring, etc. Presently counties are required to use 20% (about $1.2 million statewide) of CCA funds for these programs. The subcommittee recommends increasing CCA funding earmarked for community programs by 8% when a county uses at least 50% of CCA funds for these programs. Any of the 20% mandatory use funds not spent by counties on diversion programs as required shall be offset against the following year's allocation to counties that use the funds for diversion programs. *(Immediate 8, Diversion 11) (121st Legislature)*

51. **Establish case management committees:** Encourage each county to establish a Case Management Committee to review the status of pre-trial inmates held in jail to help prevent these offenders from languishing for long periods of time in jail. *(Immediate 13) (121st Legislature)*

9. Deferred For Further Study

The Commission identified these recommendations as having merit, but, due to a variety of reasons, was unable to recommend them at this time. Within resources, the Commission hopes to continue to work on these proposals, provided the Legislature extends its charge. Should the Legislature not extend the charge of the Commission, we recommend that the Legislature assign the responsibility for exploring these proposals to another appropriate entity.

52. **Appropriate more Community Corrections Funds as an Incentive to Regionalize:** Appropriate additional Community Corrections Funds to provide counties a financial incentive to develop and operate regional jail facilities. A clear definition of jail regionalization needs to be developed to clearly define what facilities and/or services and programs would constitute a regional jail to qualify for the proposed additional funding. If the Commission's work is extended, programs and services and specific proposals are areas that require further review by the Commission. (*Immediate 9*)

53. **Consider using Home Release more:** Examine why 30-A MRSA Home Release is not presently being fully utilized by counties. Home Release should be used to permit low-risk sentenced inmates in county jails to participate in this program earlier during their sentence. The present law requires that an inmate complete one third of their sentence before they can apply for the program. (*Immediate 10*)

54. **Address problems related to offenders with mental health and substance abuse issues:** Evaluate the joint plan of action between the departments of Correction and Behavioral and Development Services and address mental illness in the criminal justice community and to prevent inmate deaths and explore solutions to the lack of diversion placements and community treatment for offenders with mental health and substance abuse problems. This issue will be a major focus of this Commission (if the Commission continues). (*Immediate 14*)

55. **Examine confidentiality laws:** Examine federal and state confidentiality laws to facilitate information sharing by state and county agencies on shared clients in order to provide more effective and efficient services to juvenile and adult offenders. (*Diversion 22*)

56. **Evaluate current sentencing, plea bargaining, and pre-trial practices:** Consider effective sentencing practices to determine what's appropriate and to establish priorities and uniform understanding of sentencing, plea bargaining, and pre-trial practices. For example, practitioners should consider straight sentences, completely probated sentences, and/or sentences involving community restitution. Practitioners should reflect on appropriate lengths of incarceration and/or probation (for example, does 8 years of incarceration accomplish anything more than 7 years? Or 4 years of probation as opposed to 3 years?). The Sentencing Institute scheduled for December 2004 could be used as a forum for district attorneys, defense attorneys, prosecutors, corrections officials, and law enforcement officials to undertake this dialogue. (*Sentencing 6*)

57. **Reassess mandatory minimums:** Conduct a review of all mandatory minimum sentences and propose amending any they find are no longer necessary by September 30, 2004. Determine the impact (including costs) of

sentences on inmate population and study Maine's sentencing ranges with a prospect of increased differentiation within ranges. (*Sentencing 2 and 7*)

58. **Ensure sentencing decisions take into account availability of placement and programs:** Examine ways to ensure that sentencing judges take into consideration the availability of placement (or lack thereof) to a jail or DOC facility or to probation. This consideration would include the availability (or lack thereof) of meaningful correctional programs and appropriate treatment/services. (*Sentencing 23*)

59. **Reassess and improve bail laws:** Review existing bail laws and make recommendations for change. (*Immediate 11*)

60. **Consider the need for 72-hour administrative hearings for probation violators:** The Legislature's Criminal Justice Committee should look at the need for 72-hour administrative hearings for probation violators. *Sentencing 20*)

61. **Expand home monitoring:** Look at ways to increase the use of home monitoring with its new technologies in both state and county facilities.

VII. Proposed Legislation

Note: The proposed legislation presented below is a preliminary draft

LR 2717: An Act To Implement The Recommendations Of The Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, state prisons and county jails are filled beyond available budgeted bed capacity; and

Whereas, this overcrowding imposes an imminent danger to the safety of inmates, corrections officers, law enforcement officers and the public; and

Whereas, this overcrowding is the direct cause of an escalation in the number of inmate suicides and in the type and number of injurious attacks on corrections officers, law enforcement officers and other inmates; and

Whereas, this overcrowding imposes a financial burden on Maine's taxpayers; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health, and safety; now, therefore,

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

Sec. 1. 15 MRSA § 1004 is amended to read:

§ 1004. Applicability and exclusions

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor is a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229 or post-conviction review proceedings under sections 2121 to 2132, probation revocation proceedings under Title 17-A, sections 1205 to 1207, supervised release revocation proceedings under Title 17-A, section 1233, or administrative release revocation proceedings under Title 17-A, sections 1349 to 1349-F, except to the extent and under the conditions stated in those sections. It does not apply to a deferred disposition under Title 17-A, chapter 54-F. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving punitive sanction under the Maine Rules of Criminal Procedure,

Rule 42 or the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in section 1103 and 1104, respectively.

Sec. 2. 17-A MRSA §15, sub-§1, ¶A, sub-¶6 is amended to read:

> **(6)** Theft as defined in section 357, when the value of the services is ~~$1,000~~ $3,000 or less if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

Sec. 3. 17-A MRSA §352, sub-§5, ¶D is amended to read:

D. If the value of property or services cannot be ascertained beyond a reasonable doubt pursuant to the standards set forth in paragraphs A to C, the trier of fact may find the value to be not less than a certain amount, and if no such minimum value can be thus ascertained, the value is deemed to be an amount less than ~~$500~~ $1,000.

Sec. 4. 17-A MRSA §353, sub-§1, ¶B, sub-¶¶4 and 5 are amended to read:

(4) The value of the property is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime;

(5) The value of the property is more than ~~$500~~ $1,000 but not more than ~~$1,000~~ $3,000. Violation of this subparagraph is a Class D crime; or

Sec. 5. 17-A MRSA §354, sub-§1, ¶B, sub-¶¶4 and 5 are amended to read:

(4) The value of the property is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime;

(5) The value of the property is more than ~~$500~~ $1,000 but not more than ~~$1,000~~ $3,000. Violation of this subparagraph is a Class D crime; or

Sec. 6. 17-A MRSA §354-A, sub-§1, ¶B, sub-¶¶4 and 5 are amended to read:

(4) The value of the property is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime;

(5) The value of the property is more than ~~$500~~ $1,000 but not more than ~~$1,000~~ $3,000. Violation of this subparagraph is a Class D crime; or

Sec. 7. 17-A MRSA §356-A, sub-§1, ¶B, sub-¶¶4 and 5 are amended to read:

(4) The value of the property is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime;

(5) The value of the property is more than ~~$500~~ $1,000 but not more than ~~$1,000~~ $3,000. Violation of this subparagraph is a Class D crime; or

Sec. 8. 17-A MRSA §357, sub-§1, ¶B, sub-¶¶3 and 4 are amended to read:

(3) The value of the property is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime;

(4) The value of the property is more than ~~$500~~ $1,000 but not more than ~~$1,000~~ $3,000. Violation of this subparagraph is a Class D crime; or

Sec. 9. 17-A MRSA §357, sub-§2, ¶B, sub-¶¶3 and 4 are amended to read:

(3) The value of the property is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime;

(4) The value of the property is more than ~~$500~~ $1,000 but not more than ~~$1,000~~ $3,000. Violation of this subparagraph is a Class D crime; or

Sec. 10. 17-A MRSA §358, sub-§1, ¶B, sub-¶¶5 and 6 are amended to read:

(5) The value of the property is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime;

(6) The value of the property is more than ~~$500~~ $1,000 but not more than ~~$1,000~~ $3,000. Violation of this subparagraph is a Class D crime;

Sec. 11. 17-A MRSA §359, sub-§1, ¶B, sub-¶¶4 and 5 are amended to read:

(4) The value of the property is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime;

(5) The value of the property is more than ~~$500~~ $1,000 but not more than ~~$1,000~~ $3,000. Violation of this subparagraph is a Class D crime; or

Sec. 12. 17-A MRSA §405, sub-§2 is amended to read:

2. Burglary of a motor vehicle is a Class ~~C~~ D crime.

Sec. 13. 17-A MRSA §703, sub-§1. ¶¶A-1 and B-1 are amended to read:

A-1. The person violates paragraph A and:

> **(1)** The face value of the written instrument or the aggregate value of the instruments is more than $10,000. Violation of this subparagraph is a Class B crime;

(2) The face value of the written instrument or the aggregate value of the instruments is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime; or

(3) At the time of the forgery, the person has 2 prior convictions for any combination of the following: theft; violation or attempted violation of this section; any violation or attempted violation of section 401 if the intended crime within the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation or attempted violation of section 651; or any violation or attempted violation of section 702 or 708. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime;

B-1. The person violates paragraph B and:

(1) The face value of the written instrument or the aggregate value of the instruments is more than $10,000. Violation of this subparagraph is a Class B crime;

(2) The face value of the written instrument or the aggregate value of the instruments is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime; or

(3) At the time of the forgery, the person has 2 prior convictions for any combination of the following: theft; violation or attempted violation of this section; any violation or attempted violation of section 401 if the intended crime within the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation or attempted violation of section 651; or any violation or attempted violation of section 702 or 708. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime

Sec. 14. 17-A MRSA §708, sub-§1, ¶B is amended to read:

B. The person violates paragraph A and:

(1) The face value of the written instrument or the aggregate value of the instruments is more than $10,000. Violation of this subparagraph is a Class B crime;

(2) The face value of the written instrument or the aggregate value of the instruments is more than ~~$1,000~~ $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime;

(3) The face value of the negotiable instrument is more than ~~$500~~ $1,000 but not more than ~~$1,000~~ $3,000. Violation of this subparagraph is a Class D crime; or

(4) At the time of negotiating a worthless instrument, the person has 2 prior convictions for any combination of the following: theft; violation or attempted violation of this section; any violation or attempted violation of section 401 if the intended crime within the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation or attempted violation of section 651; or any violation or attempted violation of section 702 or 708. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.

Sec. 15. 17-A MRSA §755, sub-§§1-A and 1-B are repealed and replaced with the following:

1-A. A person is guilty of escape from intensive supervision imposed pursuant to chapter 52 if without official permission the person intentionally:

A. Fails to appear for work, for school or for a meeting with the person's Intensive Supervision Program officer. Violation of this paragraph is a Class D crime;

B. Violates a curfew, time or travel restriction. Violation of this paragraph is a Class C crime;

C. Violates paragraph A and at the time of the escape the person uses physical force against another person, threatens to use physical force or is armed with a dangerous weapon. Violation of this paragraph is a Class B crime; or

D. Violates paragraph B and at the time of the escape the person uses physical force against another person, threatens to use physical force or is armed with a dangerous weapon. Violation of this paragraph is a Class B crime.

1-B. A person is guilty of escape from supervised community confinement granted pursuant to Title 34-A, section 3036-A if without official permission the person intentionally:

A. Fails to appear for work, for school or for a meeting with that person's supervising officer. Violation of this paragraph is a Class D crime;

B. Fails to return to the correctional facility from which transfer was made upon the direction of the Commissioner of Corrections. Violation of this paragraph is a Class C crime;

C. Violates a curfew, residence, time or travel restriction. Violation of this paragraph is a Class C crime;

D. Violates paragraph A and at the time of the escape the person uses physical force against another person, threatens to use physical force or is armed with a dangerous weapon. Violation of this paragraph is a Class B crime;

E. Violates paragraph B and at the time of the escape the person uses physical force against another person, threatens to use physical force or is armed with a dangerous weapon. Violation of this paragraph is a Class B crime; or

F. Violates paragraph C and at the time of the escape the person uses physical force against another person, threatens to use physical force or is armed with a dangerous weapon. Violation of this paragraph is a Class B crime.

Sec. 16. 17-A MRSA §1152, sub-2, ¶¶H and I are amended to read:

H. A county jail reimbursement fee as authorized by chapter 54-B; ~~or~~

I. A specified number of hours of community service work as authorized by chapter 54-C~~.~~ ;

Sec. 17. 17-A MRSA §1152, sub-2, ¶¶J, K and L are enacted to read:

J. Deferred Disposition as authorized by chapter 54-F;

K. A fine, suspended in whole or in part, with, at the court's discretion, administrative release as authorized by chapter 54-G; or

L. A suspended term of imprisonment with administrative release as authorized by chapter 54-G.

Sec. 18. 17-A MRSA §1175, sub-§3 is amended to read:

3. The notice required by this section must contain:

A. The name of the defendant;

B. The nature of the release authorized, whether it is a conditional release, including probation, parole, furlough, work release, intensive supervision, supervised community confinement, home release monitoring or a similar program or release under Title 15, section 104-A, or an unconditional release and discharge upon the expiration of a sentence or upon discharge under Title 15, section 104-A;

C. The anticipated date of the defendant's release from institutional confinement and any date on which the defendant must return to institutional confinement, if applicable;

D. The geographic area to which the defendant's release is limited, if any;

E. The address at which the defendant will reside; and

F. The address at which the defendant will work, if applicable.

G. A telephone number or internet address that the victim can access to learn of the earliest possible date of the expiration of the defendant's sentence or, in the case of a split sentence, the earliest possible date of the completion of the unsuspended portion of the sentence, or the earliest possible date of a discharge under Title 15, section 104-A.

Sec. 19. 17-A MRSA § 1201, sub-§1, ¶¶ A-1 and A-2 are enacted to read:

A-1. The conviction is for a Class D or Class E crime other than any Class D crime in chapter 9, any Class D or Class E crime in chapter 11, the Class D crimes of sections 554, 556, 758, 854 and 855, the Class D crime of Title 17, section 2924, and the Class D crime of Title 29-A, section 2411, subsection 1-A, paragraph B;

A-2. The court sentences the person to a section 1152 sentencing alternative that includes a period of administrative release;

Sec. 20. 17-A MRSA §1202, sub-1 is amended to read:

1. A person convicted of a Class A crime may be placed on probation for a period not to exceed ~~6~~ 4 years; for a Class B ~~or Class C~~ crime, for a period of probation not to exceed 3 years; ~~and~~ for a Class C crime, for a period of probation not to exceed 2 years; and for Class D and Class E crimes, for a period not to exceed one year, except that a person convicted under chapter 11 or section 854, excluding subsection 1, paragraph A, subparagraph (1), of a Class A crime may be placed on probation for a period not to exceed 6 years; for a Class B or Class C crime, for a period of probation not to exceed 4 years; and for Class D and Class E crimes, for a period not to exceed one year.

Sec. 21. 17-A MRSA § 1202, sub-§2-A is enacted to read**:**

2-A. On application of the probation officer, or of the person on probation, or on its own motion, the court may convert a period of probation for a Class D or Class E crime to a period of administrative release, if warranted by the conduct of such person. A conversion to administrative release may not be ordered upon the motion of the person on probation unless notice of the motion is given to the probation officer by the person on probation. The provisions of chapter 54-G apply when probation is converted to administrative release. Conversion to administrative release serves to relieve the person on probation of any obligations imposed by the probation conditions.

Sec. 22. 17-A MRSA §1252, sub-§9 is enacted to read:

9. Whenever a mandatory minimum fine or period of imprisonment is required by law, the mandatory minimum sentence may be suspended if imposition of the mandatory

minimum sentence would create substantial injustice and if the deviation from the mandatory minimum sentence neither diminishes the gravity of the offense nor adversely affects the safety of the public and would not frustrate the general purposes of sentencing set forth in section 1151. In deviating from the mandatory minimum sentence, the court shall consider all relevant factors, including:

A. The nature of the criminal act;

B. The defendant's prior record;

C. The recommendations of the victim or the victim's family and the prosecuting attorney;

D. The defendant's prospects for rehabilitation, credible demonstration of remorse and a comprehension of the consequences of the defendant's actions; and

E. The age, background, and physical and mental condition of the defendant, the defendant's family circumstances and whether the criminal act was an isolated aberration in the life of the defendant.

Sec. 23. 17-A MRSA §1253, sub-§2, ¶A is enacted to read:

A. For any person who commits a crime on or after October 1, 2004, is subsequently sentenced to a term of imprisonment for that crime and is entitled to receive a day-for-day deduction pursuant to this subsection, up to 2 additional days per calendar month may be credited to that deduction, if the person's conduct during that period of detention was such that the credit is determined to be warranted in the discretion of the chief administrative officer of the facility in which the person has previously been detained.

Credits under this paragraph must be calculated as follows for partial calendar months:

Days of partial month	Maximum credit available
1 to 15 days	**up to 1**
16 to 31 days	up to 2

The sheriff or other person required to furnish a statement showing the length of detention shall also furnish a statement showing the number of days credited pursuant to this paragraph.

Detention awaiting trial, during trial, post-trial awaiting sentencing or post-sentencing prior to the date on which a sentence commences to run is not punishment.

Sec. 24. 17-A MRSA §1253, sub-§§9-11 are enacted to read:

9. For any person who commits a crime, other than murder or gross sexual assault, on or after October 1, 2004 and is subsequently sentenced to a term of imprisonment for that crime, up to 4 days per calendar month may be deducted from that term, calculated from the date of commencement of that term as specified under subsection 1, whose conduct during that month is such that the deduction is determined to be warranted in the discretion of the chief administrative officer of the state facility or the sheriff of the county jail.

Deductions under this provision must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 7 days	up to 1
8 to 15 days	up to 2
16 to 23 days	up to 3
24 to 31 days	up to 4

For any person who commits a crime of murder or gross sexual assault on or after October 1, 2004 and is subsequently sentenced to a term of imprisonment for that crime, up to 2 days per calendar month may be deducted from that term, calculated from the date of commencement of that term as specified under subsection 1, whose conduct during that month is such that the deduction is determined to be warranted in the discretion of the chief administrative officer of the state facility or the sheriff of the county jail.

Deductions under this provision must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 15 days	**up to 1**
16 to 31 days	up to 2

A. Any portion of the time deducted from the sentence of any person pursuant to this subsection may be withdrawn by the chief administrative officer of the state facility for a disciplinary offense or for the violation of any law of the State in accordance with Title 34-A, section 3032 and the rules adopted under that section, or by the sheriff of the county jail in accordance with jail disciplinary procedures. Deductions may be withdrawn for months already served or yet to be served by the person up to and including the maximum authorized for that sentence.

B. The chief administrative officer of the state facility or the sheriff of the county jail may restore any portion of deductions that have been withdrawn if the person's later conduct is such that the restoration is determined to be warranted in the discretion of the chief administrative officer or the sheriff.

10. For any person who commits a crime on or after October 1, 2004 and is subsequently sentenced to a term of imprisonment for that crime, up to an additional 3 days per calendar month may be deducted from that term, calculated from the date of commencement of that term as specified under subsection 1, whose fulfillment of responsibilities assigned in the person's transition plan for work, education, or rehabilitation programs during that month is such that the deduction is determined to be warranted in the discretion of the chief administrative officer of the state facility or the sheriff of the county jail.

Deductions under this provision must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 10 days	up to 1
11 to 20 days	up to 2
21 to 31 days	up to 3

In addition to the up to 3 days of deduction provided for in this subsection, for any person who commits a crime on or after October 1, 2004 and is subsequently sentenced to a term of imprisonment for that crime to a state facility, up to 2 days per calendar month may also be deducted from that term, calculated from the date of commencement of that term as specified under subsection 1, whose fulfillment of responsibilities assigned in the person's transition plan for community work, education, or rehabilitation programs during that month is such that the deduction is determined to be warranted in the discretion of the chief administrative officer of the state facility.

Deductions under this provision must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 15 days	up to 1
16 to 31 days	up to 2

A. Any portion of the time deducted from the sentence of any person pursuant to this subsection may be withdrawn by the chief administrative officer of the state facility for a disciplinary offense or for the violation of any law of the State in accordance with Title 34-A, section 3032 and the rules adopted under that section, or by the sheriff of the

county jail in accordance with jail disciplinary procedures. Deductions may be withdrawn for months already served or yet to be served by the person up to and including the maximum authorized for that sentence.

B. The chief administrative officer of the state facility or the sheriff of the county jail may restore any portion of deductions that have been withdrawn if the person's later conduct and fulfillment of responsibilities assigned in the person's transition plan for work, education, or rehabilitation programs are such that the restoration is determined to be warranted in the discretion of the chief administrative officer or sheriff.

11. Subsections 9 and 10 supersede subsections 3, 3-B, 4, 5, 6, and 8 for persons who commit offenses on or after October 1, 2004.

Sec. 25. 17-A MRSA c. 54-F is enacted to read:

CHAPTER 54-F

DEFERRED DISPOSITION

§ 1348. Eligibility for a deferred disposition

A person who has pled 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, and who consents to a deferred disposition in writing, is eligible for a deferred disposition.

§ 1348-A. Deferred disposition

1. Following the acceptance of a plea of guilty for a crime for which a person is eligible for a deferred disposition under section 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, deemed by the court to be reasonable and appropriate to assist the person to lead a law-abiding life, provided that in every case it shall be a requirement that the person refrain from criminal conduct. In exchange for the deferred sentencing the person shall abide by the court-imposed deferment requirements. Unless the court orders otherwise, the requirements are immediately in effect.

2. During the period of deferment and upon application of the person, the attorney for the state, or upon its own motion, the court may, after a hearing upon notice to the attorney for the state and the person, modify the requirements imposed by the court, add further requirements, or relieve the person of any requirement imposed by the court that, in its opinion, imposes an unreasonable burden on the person.

3. During the period of deferment bail does not apply.

§ 1348-B. Court hearing as to final disposition

1. Unless a court hearing is sooner held under subsection 2, at the conclusion of the period of deferment, after notice, the person shall return to court for a hearing on final disposition. If the court finds that the person has complied with the court-imposed requirements, the court shall either impose a sentence of unconditional discharge under section 1346 or allow the person to withdraw the earlier-accepted plea of guilty. In the event the court selects the latter option, the court shall dismiss the indictment, information or complaint with prejudice. If the court finds that the person has inexcusably failed to comply with the court-imposed requirements, the court shall impose a sentencing alternative authorized for the crime to which the person pled guilty.

2. If during the period of deferment the attorney for the state has probable cause to believe that the person has violated a court-imposed requirement, the attorney for the state may move the court to terminate the remainder of the period of deferment and impose sentence. Following notice and hearing, if the court finds by a preponderance of the evidence that the person has inexcusably failed to comply with a court-imposed requirement, it may continue the running of the period of deferment with the requirements unchanged, or modify the requirements, or add further requirements, or it may terminate the running of the period of deferment and impose a sentencing alternative authorized for the crime to which the person pled guilty. If it finds that the person has not inexcusably failed to comply with a court-imposed requirement, it shall order that the running of the period of deferment continue.

3. A hearing under this section or section 1348-A must be held in the court that ordered a deferred disposition. The hearing need not be conducted by the justice or judge who originally ordered a deferred disposition but may be heard by any justice or judge.

4. The person at a hearing under this section or section 1348-A must be afforded the opportunity to confront and cross-examine witnesses against the person, to present evidence on that person's own behalf and to be represented by counsel. If the person on the deferred disposition cannot afford counsel, the court shall appoint counsel for the person. Assignment of counsel and withdrawal of counsel must be in accordance with the Maine Rules of Criminal Procedure.

5. A summons shall be used ordering the person to appear for a hearing under this section. If the person can be found and served with a summons, the attorney for the state may not commence a hearing under this section by having the person arrested, except that a person who fails to appear as required may be arrested pursuant to a bench warrant or an order of arrest.

6. If the person can not, with due diligence, be located, the attorney for the state shall file a written notice of this fact with the court that ordered the deferred disposition. If the hearing is for a final disposition at the conclusion of the period of deferment, and the person fails to appear at that hearing, the person may be arrested pursuant to a bench warrant or an order of arrest. If the hearing is to determine whether the person has inexcusably failed to comply with a court-

imposed requirement, the attorney for the state shall apply for a warrant of arrest in accordance with Rule 41 of the Maine Rules of Criminal Procedure.

§ 1348-C. Limited review by appeal

A person is precluded from seeking to attack the legality of a deferred disposition, including a final disposition, except that a person who has been determined by a court to have inexcusably failed to comply with a court-imposed requirement and thereafter has been sentenced to an alternative authorized for the crime may appeal to the Law Court, but not as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

Sec. 26. 17-A MRSA c. 54-G is enacted to read:

CHAPTER 54-G

ADMINISTRATIVE RELEASE

§ 1349. Eligibility for a sentence alternative that includes a period of administrative release.

A person who has been convicted of a Class D or Class E crime may be sentenced to a section 1152 sentence alternative that includes a period of administrative release, unless:

A. The statute that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized therein;

B. The court sentences the person to a section 1152 sentencing alternative that includes a period of probation; or

C. The court finds that such a sentence would diminish the gravity of the crime for which that person was convicted.

§ 1349-A. Period of administrative release

1. A person who has been convicted of a Class D or Class E crime may be placed on administrative release for a period not to exceed one year.

2. During the period of administrative release, and upon application of a person on administrative release, the attorney for the state or upon its own motion, the court may, after a hearing upon notice to the attorney for the state and the person, modify the requirements imposed

by the court, add further requirements, or release the person of any requirement imposed by the court that, in its opinion, imposes on the person an unreasonable burden.

3. On application of the attorney for the state, or the person on administrative release, or on its own motion, the court may terminate a period of administrative release and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsection 1, if warranted by the conduct of such person. A termination and discharge may not be ordered upon the motion of the person on administrative release unless notice of the motion is given to the attorney for the state by the person on administrative release. Such termination and discharge shall serve to relieve the person on administrative release of any obligations imposed by the sentence of administrative release.

4. Any justice, in order to comply with section 1256, subsection 8, may terminate a period of administrative release that would delay commencement of a consecutive unsuspended term of imprisonment. Any judge may also do so if that judge has jurisdiction over each of the sentences involved.

§ 1349-B. Suspended sentence with administrative release

1. The court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for the Class D or Class E crime, suspend the entire term of imprisonment and accompany the suspension with a period of administrative release not to exceed the one year authorized under section 1349-A, subsection 1.

2. The court may sentence a person to a fine, not to exceed the maximum fine authorized for the Class D or Class E crime, suspend the fine in whole or in part, and accompany the suspension with a period of administrative release not to exceed the one year authorized under section 1349-A, subsection 1.

3. A sentence imposed under subsection 1 or subsection 2 commences on the date the person goes into actual execution of the sentence.

§1349-C. Requirements of administrative release

1. If the court imposes a suspended sentence with administrative release under section 1349-B, it shall attach requirements of administrative release, as authorized by this section, as it determines to be reasonable and appropriate to help ensure accountability of the person, provided that in every case it is a requirement of administrative release that the convicted person refrain from criminal conduct.

2. In addition to a requirement that the convicted person refrain from criminal conduct, the court in its sentence may require the convicted person:

A. To pay any fine imposed by the court as part of the sentence;

B. To make any restitution to each victim of the crime imposed by the court;

C. To pay any assessments, surcharges, fees or court costs imposed by the court as part of the sentence;

D. To perform any community service work imposed by the court as part of the sentence; or

E. To satisfy any other requirement reasonably related to help ensure the accountability of the person.

3. The convicted person must be given an opportunity to address the court on the requirements that are proposed to be attached and must, after the sentencing, be given a written statement setting forth the specific requirements on which the person is being administratively released.

§ 1349-D. Commencement of administrative release revocation proceeding

1. If during the period of administrative release the attorney for the state has probable cause to believe that the person has violated a requirement of administrative release, the attorney for the state may file a motion with the court seeking to revoke administrative release and cause a summons to be delivered to the person ordering that person to appear for a court hearing on the alleged violation. The motion must set forth the facts underlying the alleged violation. The summons must be in the same form as a summons under section 1205-B, subsection 2, except that it must include the signature of a law enforcement officer other than a probation officer.

2. A person appearing on a motion to revoke administrative release pursuant to a summons must be afforded an initial appearance as provided in section 1205-C, subsection 4.

3. If the person fails to appear in court after having been served with a summons, the court may issue a warrant for the arrest of the person. After arrest the court shall afford the person a preliminary hearing as provided in section 1205, subsection 4, and, if retained in custody, section 1205-C, subsection 3 applies.

4. If the person can be located and served a summons, the attorney for the state may not commence the administrative release proceeding by having the person arrested. However, if the person can not, with due diligence, be located, the attorney for the state shall file a written notice of this fact with the court and obtain a warrant of arrest under Rule 41 of the Maine Rules of Criminal Procedure. Unless sooner released, the court shall provide the person with an initial appearance on the revocation of administrative release within 14 days after arrest. A copy of the motion must be furnished to the person prior to or at the initial appearance. The initial appearance is as provided in section 1205-C, subsection 4. Bail is as provided in section 1205-C, subsection 5 and 6.

§ 1349-E. Court hearing on administrative release revocation

The hearing on the motion to revoke administrative release is as provided under section 1206, except subsections 7-B and 9 do not apply.

§ 1349-F. Review

Review of a revocation of administrative release pursuant to section 1349-E must be by appeal. The appeal is as provided under section 1207.

Sec. 27. 34-A MRSA § 1210-A, sub-5 is amended to read:

5. Community Corrections Program Account. Each county treasurer shall place 20% of the funds received from the department pursuant to this section into a separate community corrections program account. Funds placed in this account may be used only for adult or juvenile community corrections as defined in subsection 1. [1997, c. 753, §2 (new).]

A. Those counties who demonstrate to the Department that at least 50% of the Community Corrections funds received are expended for the purposes in Section 1 will receive an additional 8% increase in funds received pursuant to this section and to be used pursuant to section 1.

B. If a county does not comply with the requirement in this section, said county's allocation of community corrections funds for the next year shall be reduced by an amount equal to the amount of funds not spent by said county on adult or juvenile community corrections as defined in subsection 1. Funds from the reduced allocation to counties in noncompliance will be redistributed to counties that use the funds as described in subsection 5-A.

Section 28. **Addressing mental illness in prisons and jails**. No later than April 1, 2004, the departments of Corrections and Behavioral Services shall develop a joint plan of action to address mental illness in the criminal justice community and to prevent inmate deaths. In developing the plan the departments will invite the Maine County Sheriff's Association to participate. The plan will be delivered to the Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners.

Section 29. **Moratorium on changes to Maine Criminal Code**. It is the intent of the Legislature that from the effective date of this Act for a period of one year, no amendments to the Maine Revised Statutes, Title 17-A (and any other provisions of law that establish a crime or impose criminal sanctions) may take effect in order that the impact of sentencing on inmate populations may be adequately studied and that other actions to alleviate the current overcrowding crisis faced in state prisons and county jails may occur. The Legislature further

intends that any such amendments that are enacted into law that conflict with this intent during the year-long moratorium should be given no affect by State Government, including the Judicial Department. The sentencing recommendations from the Commission to Improve Community Safety and Sex Offender Accountability are exempt from this moratorium.

Section 30. Impacts of Sentencing and Minimum Mandatory Sentences. The Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners shall undertake a study to determine the impacts of Maine's sentencing laws on inmate population. The study will identify changes in Maine's sentencing laws over time; identify new laws, assess how sentencing practices have changed, and determine the impact of sentencing on inmate population and on state and county budgets. The Commission shall undertake this work within its existing FY04 appropriation should those resources allow.

The Criminal Law Advisory Commission (CLAC) shall assist the Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners with a review all minimum mandatory sentences and propose amending any they find are no longer necessary. CLAC shall also examine the State's sentencing ranges and propose increased differentiation within ranges. CLAC shall report its findings and recommendations, including proposed legislation, to the Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners no later than September 30, 2004.

The commission is authorized to introduce legislation related to sentencing to the First Regular Session of the 122nd Legislature.

SUMMARY

This bill is the recommendation of the Commission to Improve Sentencing, Supervision, Management and Incarceration of Prisoners, which was established pursuant to Public Law 2003, chapter 451. The bill does the following.

1. It increases the monetary threshold for classification of theft crimes for Class C and Class D crimes, including the crimes of forgery and negotiating a worthless instrument.

2. It decreases from a Class C to a Class D crime burglary of a motor vehicle.

3. It decreases from a Class C to a Class D crime an inmate's failure to appear for work, school or for a meeting with the inmate's supervising officer while the inmate is on intensive supervision or supervised community confinement.

4. It creates 2 new sentencing alternatives, deferred disposition and administrative release and authorizes the court to convert probation to administrative release.

5. It restricts the use of probation for Class D and Class E crimes involving domestic violence, sex offenses and repeat OUI offenses.

6. It reduces for all crimes, except those under Title 17-A, chapter 11 and Title 17-A, section 854, excluding subsection 1, paragraph A, subparagraph (1), the length of time a person may be sentenced to probation to 4 years for a Class A crime, 3 years for a Class B crime, 2 years for a Class C crime and 1 year for a Class D or Class E crime.

7. It grants the sentencing court the authority to deviate from a mandatory minimum sentence and mandatory minimum fine in those circumstances where the court determines that the mandatory fine or sentence would create a substantial injustice and the deviation would not diminish the gravity of the offense or adversely affect the public safety. The court must consider specific factors before deviating from the mandatory minimum.

8. It requires a notice of a defendant's release sent to a victim to include a phone number or internet address so the victim can learn the earliest possible date of the expiration of the imprisonment portion of the defendant's sentence.

9. It provides that a person who is entitled to a deduction from his or her sentence for time spent in detention may be given additional detention credit for good behavior during the time spent in detention.

10. It increases the amount of good behavior good time that may be awarded from two to four days, except for persons convicted of gross sexual assault or murder.

11. It expands the concept of good time earned for work to include good time earned for education and rehabilitation and increases the amount that may be awarded from three to five days for prisoners in state facilities participating in community programs.

12. It rewards counties that use 50% of their Community Corrections Act (CCA) funding on diversion programs by reallocating funds from counties who do not comply with the requirement to use 20& of their CCA funds on community corrections programs.

13. It directs the Department of Behavioral Services, Department of Corrections, and county sheriffs shall develop a joint plan of action to address mental illness in the criminal justice community and to prevent inmate deaths.

14. It places a moratorium on any amendments to the State Criminal Code that would increase sentences or sanctions, increase classifications of sentences, or enhance classifications of inmates with the exception of sentencing changes recommended by the Commission to Improve Community Safety and Sex Offender Accountability.

15. It directs the Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners shall undertake a study to determine the impacts of Maine's sentencing laws on inmate population and directs the Criminal Law Advisory Commission (CLAC) to assist the Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners with a review all minimum mandatory sentences and propose amending any they find are no longer necessary. It gives the Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners authority to introduce legislation.

LR 2718

An Act to Extend the Reporting Deadline of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners was established by the Legislature to examine the factors leading to prison overcrowding, the impact of current sentencing laws, the use of alternate sentences and means to reduce recidivism, in particular that caused by mental illness and substance abuse, and

Whereas, the Commission has submitted its report to the Legislature including recommendations to accomplish immediate solutions to the factors contributing to jail and prison overcrowding, however, additional research and deliberation are needed to examine the impact of current sentencing laws on prisoner populations, to address the issues of mental illness in the criminal justice system, and to enhance juvenile delinquency prevention and diversion from the criminal justice system; and

Whereas, in order to continue the work of the Commission and to address these compelling issues, an extension in its reporting deadline is required, and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health, and safety; now, therefore,

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

Sec.1. PL 2003, c. 451, §K-2, ¶1 is amended to read:

1. Commission membership. The commission consists of ~~17~~ 19 members appointed as follows:

Sec.2. PL 2003, c. 451, §K-2, ¶1-A is enacted to read:

1-A. Membership and additional appointments. All current members of the commission will continue to serve. Two additional legislative members will be appointed, one member of the Senate appointed by the President of the Senate and one member of the House of Representatives appointed by the Speaker of the House.

Sec.3. PL 2003, c. 451, §K-2, sub-§2 is amended to read:

2. Appointments; ~~chairs~~ chair; meetings. All appointments must be made no later than 30 days following the effective date of this Act. The Governor shall appoint a chair from among the membership of the commission, who shall call and convene the first meeting of the commission no later than 15 days after the appointments of all members. ~~The commission may hold a total of 6 meetings, one of which may be a public hearing.~~ The commission may meet as often as necessary to complete its final report within authorized resources.

Sec.4. PL 2003, c. 451, §K-2, sub-§4 is amended to read:

4. Staff assistance. The ~~State Planning Office~~ Department of Corrections shall provide staffing assistance.

Sec. 5. PL 2003, c. 451, §K-2, sub-§6 is amended to read:

6. Report to address immediate needs. The commission shall submit a report to address immediate needs that includes its findings and recommendations, including legislation, to the joint standing committee of the Legislature having jurisdiction over ~~sentencing policies~~ criminal justice and public safety during the Second Regular Session of the 121st Legislature no later than ~~December 3, 2003~~ February 2, 2004. The commission is authorized to introduce legislation related to its report to the Second Regular Session of the 121st Legislature at the time of submission of its report.

Sec. 6. PL 2003, c. 451, §K-2, sub-§7 is enacted to read:

7. Final report to address long-term needs. The commission shall submit a final report to address long-term needs that includes its findings and recommendations, including legislation, to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety during the First Regular Session of the 122nd Legislature no later than January 1, 2005. The commission is authorized to introduce legislation related to its report to the First Regular Session of the 122nd Legislature at the time of submission of its report.

Sec. 7. PL 2003, c. 451, §K-2, sub-§8 is enacted to read:

8. Nonlapsing funds. Any unencumbered balance of General Fund appropriations remaining on June 30, 2004 within the Department of Corrections originally appropriated to support the work of the commission may not lapse but must be carried forward to June 30, 2005 to be used for the same purpose.

SUMMARY

The bill adds two additional legislators to the membership of the commission, extends the initial reporting date of the commission to February 2004 and extends the life of the commission to January 1, 2005, authorizing additional meetings and a final report, including legislation, to the joint standing committee of the Legislature having jurisdiction over sentencing policies. The bill also authorizes the Commission to carry forward any remaining funds appropriated in FY04 to FY05.

VIII. Appendices

A. Commission Members

Affiliation	Member	Designee*
A member of the public appointed by the Governor	**Don Allen,** Chair of Commission	
Two members of the Senate appointed by the President of the Senate	**Hon. Senator Mary Cathcart** **Hon. Senator Ethan Strimling**	
Two members of the House of Representatives appointed by the Speaker of the House	**Hon. Representative Janet Mills** **Hon. Representative Carol Grose**	
The Attorney General or a designee	**Steven Rowe,** Attorney General	**Andrew Benson**, Assistant Attorney General Or (not both) **Diane Sleek**, Assistant Attorney General
The Commissioner of the Department of Corrections or a designee	**Martin Magnusson,** Commissioner, Maine Department of Corrections	**Denise Lord**, Associate Commissioner, Maine Department of Corrections
The Commissioner of Behavioral and Developmental Services or a designee	**Sabra Burdick**, Acting Commissioner, Maine Department of Behavioral and Developmental Services	**Kimberly Johnson**, Director of the Office of Substance Abuse
A representative of Adult Community Corrections appointed by the Commissioner of Corrections	**Harold "Bud" Doughty, Jr.,** Associate Commissioner, Maine Department of Corrections	
A representative of a statewide association of prosecutors nominated by the association and appointed by the Governor	**Evert Fowle,** District Attorney, Kennebec County	
A representative of a statewide association of county commissioners nominated by the association and appointed by the Governor	**Elmer Berry,** Chairperson, Androscoggin County Commissioners	

A representative of a statewide association of county sheriffs nominated by the association and appointed by the Governor	**Mark Dion,** Sheriff, Cumberland County	**Mark Westrum**, Sheriff, Sagadahoc County
A representative of a statewide association of criminal defense lawyers and appointed by the Governor	**Neale Duffett,** Defense Lawyer, Maine Criminal Defense Lawyers Association	
A representative of a statewide membership organization representing people with mental illness and their families appointed by the Governor	**Carol Carothers,** Executive Director, National Alliance for the Mentally Ill of Maine	
The Chief Justice of the Supreme Judicial Court to serve or a designee	**Hon. Leigh Saufley,** Chief Justice, Maine Supreme Judicial Court	**Hon. Donald Alexander,** Associate Justice, Maine Supreme Judicial Court
2 justices or their designees appointed by the Chief Justice	**Hon. Robert Mullen,** Deputy Chief Judge, Maine District Court **Hon. Thomas Humphrey**, Deputy Chief Justice, Maine Superior Court **Hon. Joseph Jabar**, Justice, Maine Superior Court (replacing Justice Humphrey)	

* Designees only vote in the absence of the officially-appointed commission member

B. Enabling Legislation

P.L. 2004, Chapter 451

Sec. K-2. Commission established. That the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners, referred to in this section as "the commission," is established.

1. Commission membership. The commission consists of 17 members appointed as follows:

A. Two members of the Senate appointed by the President of the Senate;

B. Two members of the House of Representatives appointed by the Speaker of the House;

C. The Attorney General or a designee;

D. The Commissioner of the Department of Corrections or a designee;

E. The Commissioner of Behavioral and Developmental Services or a designee;

F. A representative of Adult Community Corrections appointed by the Commissioner of Corrections;

G. A representative of a statewide association of prosecutors nominated by the association and appointed by the Governor;

H. A representative of a statewide association of county commissioners nominated by the association and appointed by the Governor;

I. A representative of a statewide association of county sheriffs nominated by the association and appointed by the Governor;

J. A representative of a statewide association of criminal defense lawyers and appointed by the Governor;

K. A member of the public appointed by the Governor; and

L. A representative of a statewide membership organization representing people with mental illness and their families appointed by the Governor.

The commission shall ask the Chief Justice of the Supreme Judicial Court to serve or name a designee to serve as a voting member of the commission and to appoint 2 justices or their designees to serve as voting members of the commission.

2. Appointments; chairs; meetings. All appointments must be made no later than 30 days following the effective date of this Act. The Governor shall appoint a chair from among the membership of the commission, who shall call and convene the first meeting of the commission no later than 15 days after appointments of all members. The commission may hold a total of 6 meetings, one of which may be a public hearing.

3. Duties. Duties of the commission are as follows.

A. The commission shall conduct its research and prepare its recommendations with the express purpose of:

(1) Reducing the overall prison population in both state and county facilities, with a focus on lowering the population of nonviolent offenders;

(2) Reducing the overall cost of the corrections system;

(3) Accomplishing policy, program and structural improvements that reduce recidivism and improve the transition of prisoners back into the community;

(4) Preserving community safety;

(5) Respecting the needs of victims and communities in the process of holding offenders accountable for their actions; and

(6) Developing recommendations that address the factors leading to prison overcrowding, the impact of current sentencing laws, the use of alternate sentences and means to reduce recidivism, in

particular that caused by mental illness and substance abuse.

B. To accomplish its purpose, the commission shall examine multiple strategies for addressing issues related to the continually and rapidly increasing prison populations at both the county jail and state prison levels, including diversion from jail or prison, programming to improve reentry from jail or prison back to the community, community alternatives to incarceration and changes in sentencing laws, policies and practices. In conducting its examination, the commission shall:

(1) Study factors leading to overcrowding in state and county correctional facilities; examine and analyze the prison population and projected growth at both the state and county level to include offenses, length of sentence and other issues such as mental illness and substance abuse, which lead to incarceration or reincarceration; and identify trends in the offender population and determine what impact these changes will have on future growth;

(2) Examine factors linking juvenile and adult offender populations;

(3) Review existing program and treatment levels for the incarcerated offender population and recommend improvements based on projected need and effective programs supported by research; and

(4) Consult with and seek input from former inmates as well as from organizations advocating for the mentally ill.

4. Staff assistance. The State Planning Office shall provide staffing assistance.

5. Compensation. The members of the commission who are Legislators are entitled to the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for necessary expenses incurred for their attendance at authorized meetings of the commission. Members of the commission who are not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses incurred for their attendance at authorized meetings.

6. Report. The commission shall submit a report that includes its findings and recommendations, including legislation, to the joint standing committee of the Legislature having jurisdiction over sentencing policies during the Second Regular Session of the 121st Legislature no later than December 3, 2003. The commission is authorized to introduce legislation related to its report to the Second Regular Session of the 121st Legislature at the time of submission of its report.

C. List of Meetings

Full Commission:
- September 4, 2003
- September 24, 2003
- October 8, 2003
- October 29, 2003
- November 12, 2003
- November 21, 2003 (recessed)
- December 3, 2003 (recessed)
- December 17, 2003 (recessed)
- January 23, 2004

Sentencing Subcommittee
- October 15, 2003
- October 22, 2003
- November 5, 2003
- November 24, 2003

Immediate Alternatives Subcommittee
- October 22, 2003
- November 6, 2003
- December 3, 2003

Diversion Subcommittee
- October 27, 2003
- October 28, 2003
- November 2, 2003 (Sunday)
- November 7, 2003

Reentry Subcommittee
- October 23, 2003
- October 30, 2003
- November 5, 2003
- December 3, 2003

D. List of Research Projects Commissioned

George Shaler, Carmen Dorsey, and Al Leighton, Edmund S. Muskie School of Public Service, Criminal Justice Unit and Survey Research Center, "Reoccurring Criminal Behavior Analysis: Snap Shot Survey of 400 Maine state prisoner files," October 29, 2003.

Lisa M. Spruance and Edward Latessa, University of Cincinnati Corrections Institute, "Best Practices in Reducing Incarceration Rates" (preliminary report), November 12, 2003

Joyce Benson and Michael Montagna, Maine State Planning Office, "Maine's Prison Population Trends" (preliminary report), November 2003.

Kristi Holsinger, Lisa M. Spruance, Edward Latessa, University of Cincinnati Corrections Institute, "Female Incarceration Rates" (preliminary report), December 2003.

Lisa M. Spruance, Edward Latessa, University of Cincinnati Corrections Institute, "Program Gap Analysis" (anticipated completion date, Spring 2004)

E. Presentations by Experts

Carol Carothers, National Alliance for the Mentally Ill of Maine, "Overview of Mental Health Issues in State Prisons and County Jails"

Sheriff Mark Dion, "Costs of Cumberland County Jail"

Dot Faust and Lore Joplin, National Institute of Corrections and the Crime and Justice Institute, "Implementing Effective Correctional Management of Offenders in the Community: An Integrated Model"

Denise Giles, Victim Rights Coordinator, Maine Department of Corrections, "Victims' Rights"

Thomas Humphrey on Drug Court

June Koegel, Volunteers of America, "Pioneering Creative Responses to Meet Individual and Community Needs"

Rosemary Kooy, Juvenile Services Quality Assurance Manager, Maine Department of Corrections, "Applying 'What Works' in Changing Offender Behavior"

Edward Latessa, University of Cincinnati Corrections Institute, "Best Practices in Reducing Incarceration Rates"

Denise Lord, Associate Commissioner for Legislative and Program Services, Maine Department of Corrections, "The Costs of Corrections"

Denise Lord, "Overview of Maine's Prisoner Population"

Martin Magnusson, Commissioner, Maine Department of Corrections, "Supervised Community Confinement"

Ralph Nichols, Director CR S/P Practices, Maine Department of Corrections "County Jail Population Data 1994-2003"

Ralph Nichols, "Probation Population Data 1994-2003"

George Shaler, Muskie School of Public Service, "Reoccurring Criminal Behavior Analysis"

Elizabeth Simoni, "Maine Pre-trial Services"
Sheriff Mark Westrum, "Lincoln-Sagadahoc Counties, Joint County Jail Project"

F. People Who Testified at Public Hearing

Butch Asselin, President, Maine Chief's of Police Association and Chief of Police in Skowhegan
Representative Ross Paradis, Frenchville
Judy Paradis, former Senator, Frenchville
Michael Hulit, Probation and Parole Officer, Chapter MSEA
Kathy Walker, Maine Coalition Against Sexual Assault
Mark Caton, Director of the Downeast Correctional Facility
Morrison Bonpass, Trial and Error
Lisa Williams, family member of inmate
Kathy Miller, Lighthouse Corporation
Dr. Evans and Dr. Gregory Bunt, Lighthouse Corporation
John E. Leighton, Jr., Parents of Murdered Children
Angela Alphonso, victim
Kathy McDaniel, victim
Joan Churchill, Community Concepts
Bill Cumming, family member of victim
Rick Karges, Executive Director of Crisis in Counseling Services
Steve Ward, Public Advocate
Pat Kimball, Executive Director of Wellspring
Katie Rines
Phil Keldomo
Mike Derosier
Bruce Caron, Director of Maine Alliance of Addiction and Recovery
Peter Crichton, County Manager for Cumberland County Government
Esther Clennatt, Commissioner of Cumberland County
Robin Miller, Family Violence Project
Nan Bell, victim
Lois Reckett, Maine Coalition to End Domestic Violence
Jeff Rushlaw, DA from Knox, Waldo, Sagadahoc Counties
Suzanne Rudalevige, Restorative Justice
Bob Devlin, Kennebec County Administrator
Terry York, Assistant Administrator and Human Resource Manager of Kennebec County
Bob Howe, Maine County Commissioners Association and Maine Sheriffs' Association

G. Chronology of Maine's Criminal Code

Source: Compiled by Janet T. Mills, November 11, 2003

1972-76	Maine Criminal Code Commission studies Maine's diverse criminal statutes, holds hearings, redrafts criminal statutes, and submits proposed Criminal Code to Legislature. Code is enacted in 1975, to take effect in 1976,
May 1976	New Maine Criminal Code takes effect: 1) All crimes are now classified as Murder (25 years to life) or as A (0-20yrs), B (0-10 yrs.), C (0-5 yrs) (felonies), D (0-364 days), or E (0-6 mos.) (misdemeanors). This sentencing classification scheme replaced 60+ ad hoc sentencing provisions scattered through Maine law. 2) Possession of small amounts of marijuana decriminalized. 3) Parole and indeterminate (e.g. 2 to 5 yrs.) sentences abolished in favor of "determinate" or definite sentences, w/ good time. 4) Mandatory minimum sentence for murder is 20 years, later 25 years. 5) Mandatory minimum sentences also enacted for crimes against a person with use of a firearm.
1977	Degrees of homicide eliminated in factor of single crime of murder.
1977	Judges no longer permitted to sentence to specific institutions, rather to either the county jail or to the Dept of Corrections.
1977	Restitution made an independent sentencing alternative.
1977	Fines doubled for Class C, D and E crimes.
1978, 1983	Good time and meritorious good time modifications made.
1978	Maine Juvenile Code enacted, decriminalizing certain status offenses Restitution chapter of Criminal Code enacted
1980	Protection from Abuse statute enacted, including new crime of Violation of PFA.
1981	New OUI law enacted with mandatory minimum sentences of 48 hours with blood alcohol .15+. Low test OUIs become civil violations.
1982	Chubbuck decision invalidates "civil" OUIs (under .15 blood alcohol) thus requiring criminal penalties and jury trials in all OUI cases.
1982	State V. Hunter invalidates the "judicial parole" section of the Criminal Code by which sentences could be reviewed and lessened by the court based on good behavior after conviction; this provision held to violate the Separation of Powers provision of the ME Constitution.
1983	Longer and more flexible "split sentences" authorized, replacing 90-day "shock sentences."
1982, 83, 93	Enactment of Victim's Rights legislation giving victims the right to notice of plea bargains, notification of release of incarcerated individuals on request and right to be heard at sentencing.
1985	Maine Bail Code enacted allowing defendants to be held pretrial based on "integrity of the judicial process" in addition to flight risk. Violation of bail condition also becomes a new crime.
1985	Pure probation eliminated as sentencing alternative; periods of probation for Class A, B, and C crimes increased to 6, 4, and 2 years.
1985	Intensive Supervision established as "alternative to institutional confinement."
1985	Drinking in Public after being warned is made a Class E crime.
1987	Gravestone/cemetery crimes enacted, Class D and Class C
1987 (eff	Penalty of Class A crimes (e.g. Gross Sexual Assault, Robbery, Kidnapping, Arson, Attempted

1989)	Murder) increased from 20 to 40 years.
1987	Possession and Trafficking of Hypodermic Needles enacted as new crimes.
1987	Mandatory sentences enacted for Aggravated Trafficking/Furnishing Drugs.
1989	Computer crimes enacted – new Class D and C crimes.
1989	Place of confinement changed to county jail if sentence is more than 9 mos.; previously, 6 mos. threshold.
1989	Burglary of Motor Vehicle enacted as new crime, Class C felony. Manslaughter w/Motor Vehicle increased from Class C to Class B then to Class A crime.
1991 (?)	Violations Bureau established for processing traffic infractions. More offenses decriminalized (no jail penalty, no jury trial right) for ease of processing and collection of fines.
1991	Statute of limitations repealed for certain sex crimes if victim was under 16 (for crimes committed on or after 9/91 and crimes committed previously but not yet barred by prior statute of limitations).
1991 (?)	Intensive Supervision Probation no longer used by DOC.
1991	Victims Compensation Fund created.
1991	Class D crimes against the person elevated to Class C if a domestic crime and if 2 or more priors.
1991	Fines doubled to $50,000, $20,000, $5,000, and $1,000 for Class A-E crimes.
1991	State v. Lewis concludes that only the most heinous and violent Class A crimes fall into the upper tier of 20-40 year sentences.
1992	Sex Offender Registration law first enacted. New crime of failure to register as sex offender.
1993	Fines permitted to be imposed without regard to ability to pay.
1993	State v. Hewey requires sentencing court to go through 3-step process involving "basic sentence" based on criminal conduct, mitigating/aggravating factors, and appropriate period of suspension/actual incarceration. Habitual offender reduced from Class C felony to Class D misdemeanor if no current or previous OUI. Mandatory sentences for crimes committed with a firearm amended to omit terrorizing or criminal threatening.
199_	Federal "truth in sentencing" law enacted.
1995	State enacts new "good time" law requiring app. 85% of sentence to be served and computing good time as it is earned rather than up front.
1995	Community Service Work specifically authorized as sentencing alternative for Class D and E crimes.
1995	Victim's Rights chapter added to criminal code.
1995	Hewey-type analysis incorporated into Criminal Code for felony sentencings.
1996	New crime of "Home Repair Fraud" enacted, Class D crime, Class C felony if 2 priors.
1996	Crack cocaine penalties enhanced; possession increased from Class D to Class C.
1997	Recidivist provisions enacted, elevating class of crime one level with 2 or more violent priors.
1997	Community Reparations Board authorized.
1997	New crime of Class A Elevated Aggravated Assault enacted.
199_	Mandatory 2-year probation period for Class D and E domestic violence crimes.

	Extended probation for sex offenders and life-long probation authorized for dangerous sex offender. Community confinement law enacted.
1999	Sex Offender Registration & Notification Act.
2000 (?)	State requires driver's license suspension for nonpayment of fines in criminal cases, fish & wildlife cases, and traffic cases.
2001	New crime of Aggravated Attempted Murder enacted with possible sentence of life imprisonment or any term of years.
2002	Anti-terrorizing laws enacted.

H. Subcommittee Reports

Sentencing

Members:
Ethan Strimling, Chair
Donald Alexander
Neale Duffett
Denise Lord
Janet Mills
Robert Mullen

1. **Sentences and Crime Classifications**: The subcommittee found that mandatory minimum sentences and a 20-year creep up of crime classifications are a significant contributing factor to increasing prison and jail populations, as determined by the length of time inmates who have been sentenced under these laws are spending behind bars. For example:

   - Between 1982 and 2002, the number of Class A, B, C, D, and E crimes has increased 97% (from 148 to 292).
   - In 1982, other than murder, 36% of the crimes listed in the state Criminal Code were felonies. In 2002, 53% were felonies.
   - While the number of new sentence commitments to DOC are actually down nearly 30% since 1994 (774 to 554), the length of stay has increased. Based on the good time change of 1995, the average actual time served on sentences imposed since 1995 is more than the actual time served on sentences imposed before 1995 (see attached chart-page 3). The subcommittee undertook a specific study of the state's top three crimes (sex-related, burglary, and drug offenses) over the period 1994-2002. The average length of time actually served for these top three types of crimes in 2002 increased by 82% (sex), 14% (burglary), and 46% (drugs) over 1994.

Therefore, the subcommittee recommends that legislation be proposed to amend the existing sentencing laws to:

   a. **Provide judges the discretion to deviate from required mandatory minimum sentences in cases with extraordinary circumstances. In deviating from the mandatory minimum sentence, the presiding justice shall consider all relevant factors, including:**
      - **The nature of the criminal act;**
      - **The Defendant's prior record or lack thereof;**
      - **The recommendations of the victim or the victim's family and the prosecuting attorney;**
      - **The defendant's prospects for rehabilitation, credible demonstration of remorse and a comprehension of the consequences of the defendant's actions; and**

- **The age, background and physical and mental condition of the defendant, the defendant's family circumstances and whether the criminal act was an isolated aberration in the life of the defendant.**

b. Impose a one-year moratorium on any amendments to the state's criminal code that would increase sentences imposed, increase classification of sentences, or change classification on inmates until an impact study can be accomplished to determine the impact of sentences on inmate population (see below) and actions can be taken to alleviate the current overcrowding crisis faced in state prisons and county jails.

c. Amend the state Criminal Code to change Burglary of a Motor Vehicle from a Class C to a Class D crime. *(17-A MRSA § 405(2).*

d. Amend the state Criminal Code to change standards for theft as follows:

- **The value of the property is more than $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime (currently Class C begins at $1,000)**
- **The value of the property is more than $1,000 but not more than $3,000. Violation of this subparagraph is a Class D crime (currently Class D begins at $500)**

(17-A Section 353-1, sub (4) and sub (5))

e. Amend the state Criminal Code to make it a misdemeanor (Class D) if an inmate fails to appear for work, for school or for a meeting with that person's supervising officer while an inmate is on Supervised Community Confinement, rather than a felony (Class C). The subcommittee believes this may be one reason that inmates do not participate in SCC. *(17-A MRSA § 755 1-B(A))*

Additionally, the subcommittee recommends that:

f. The Sentencing Institute scheduled for December 2004 be used as a forum for district attorneys, defense attorneys, prosecutors, corrections officials, and law enforcement officials to discuss sentencing practices to determine what's appropriate and to establish priorities and uniform understanding of sentencing, plea bargaining, and pre-trial practices. For example, practitioners should consider straight sentences, completely probated sentences, and/or sentences involving community restitution. Practitioners should reflect on appropriate lengths of incarceration and/or probation (for example, does 8 years of incarceration accomplish anything more than 7 years? Or 4 years of probation as opposed to 3 years?). Until these changes in good time are enacted, practitioners must continue to actually incorporate the 1995 change (17-A MRSA §1252-B) in good time law into sentencing decisions.

g. The Legislature's Judiciary and Criminal Justice committees conduct a review of all mandatory minimum sentences and propose amending any they find are no longer necessary by September 30, 2004. (Note: This commission could be

tasked with the review should the commission's deadline be extended or the study could be contracted).

2. **Inmate Good Time**[2]: Let us state clearly that the subcommittee's intent is not solely to reduce prison rolls by awarding more good time. Rather, the goal is to change inmate behavior in order to reduce recidivism that, in turn, will decrease inmate population with a more lasting affect[3] and enhance public safety. The subcommittee has three objectives for changing the state's good time laws and policies:

- To expand the types of programs for which good time can be earned (according to a prescribed case plan) to provide them with treatment and skills so that they can become productive, healthy, and law-abiding.
- To increase the number of inmates participating in work, education, or treatment programs.[4]
- To improve victim awareness by increasing the number of victims who receive notification of their perpetrator's projected release date.

Currently, inmates can earn five days per month as follows:

2. Two days per month for good behavior
3. Up to three days per month for participating in assigned work programs (internal and external to the prison or jail facility) (prorated based on the quality of their conduct)

It is noted that the good time is also used as a behavior management tool within the prisons. Good time is taken away from inmates if they misbehave.

Finally, the subcommittee is fully aware of the impact this policy could have on victims and strives to strengthen state laws and department policies to keep victims informed of the status of their perpetrators with respect to earned good time and to increase the number of victims who receive notification of their perpetrators' projected release date[5]. Several victim advocates attended the subcommittee meetings and urged that violent offenders (murder and gross sexual assault) be excluded from any policy to increase the amount of good time that can be earned. The subcommittee also considered the input received from the commission's public hearing in which several people testified against any changes in the good time laws. The subcommittee felt very

[2] In 1995, in response to Federal *Truth in Sentencing* legislation, Maine decreased the amount of good time inmates could earn from 15 days per month to five days a month. The subcommittee found that this change was a significant factor in the increase of Maine's incarcerated population. It should be noted that federal funds for prison construction provided in conjunction with the enactment of *Truth in Sentencing* has not been appropriated by Congress since 2001, nor is it anticipated in future budget years.

[3] In order to be effective and grounded in "what works" criminal justice practice, good time must be used in the right way. This includes: 1. It is used as an appropriate reward (earning privileges, certificates of completion, praise, points, etc.); 2. The criteria (pro-social behaviors one would need to exhibit) for administration are clearly outlined (this would include objective, measurable, operationalized targeted behaviors); 3. The response is applied consistently and related to the target behavior. If one takes away good time and it is done inconsistently and the punishment outweighs the reward, it is not effective and can be harmful and increase risk. Rewards should outweigh punishes by a minimum ratio of 4:1.

[4] Approximately 35% of inmates earn the full 3-days for participating in work programs. 75% of inmates earn the full 2-days per month for good behavior

[5] Currently, about 20% of victims request notification.

strongly that the goal of good time was to change offenders' behaviors –that what is being proposed is dramatically different than the old good time law. The subcommittee felt that it was preferable for all offenders, especially violent offenders, to participate in behavioral change programs and be released six months earlier, than to receive no treatment and still be released at a later time.

Therefore, the subcommittee recommends that legislation[6] be proposed to amend inmate good time to:

a. **Increase the amount of good behavior good time inmates in state and county facilities can earn from two days per month to four.**

b. **Provide for inmates to earn the same amount of good behavior good time while awaiting trial in jail before being sentenced.**

c. **Create a new category of good time called "Work, Education, and Rehabilitation Credits" (WERC) to more accurately reflect the program's intent.**

d. **Expand the programs and activities in which inmates can participate to earn WERC time to include education programs (GED, professional certificate, technical/vocational certification, post-secondary degree), work programs (including community work programs), behavioral change programs (consistent with "what works") such as sex offender treatment and substance abuse programs (AA, substance abuse, etc.).**

e. **Require inmates to have and follow a transition case plan in order to earn WERC time.**

f. **Prorate WERC time to reflect the quality of the inmate's participation (i.e. they show up on time, they show up every day for which they are assigned work, their work performance is adequate). In addition, inmates will only be able to earn the maximum amount of WERC time for work credits at the end of their sentence (based on their transition plan) for participation in community-based work programs.**

g. **Increase the amount of WERC time inmates in state facilities can earn from three days per month to five.**

h. **Require that every victim be notified of the department of Corrections toll-free telephone number that they can call to learn of the earliest possible projected release date of their perpetrator (if someone were to earn all possible time from their first day of sentence, which is below 35%). In addition, when the department's web-based public access portal comes on line in an estimated two years, every victim**

[6] In an analysis done by the department, the increases in good time and WERC time will reduce the average projected daily population in state facilities by more than 300 inmates within three years and by 114 inmates in county jails by the end of the first year.

will be notified of how they can go on-line and look at the earliest possible projected release dates of everyone in the state corrections system.

3. **Probation**: The number of adult offenders being sentenced to probation has increased to an average daily population of more than 9,300. This is resulting in caseloads as high as 200 probationers per probation officer, as compared to the recommended caseload nationally of 1-84.

   Of the existing 9,300 probationers, more than 5,400 are sentenced to probation for Class D and E offenses. About 29% of inmates in our county jails are there as a result of probation revocations. The number of revocations to DOC alone is up over 400% since 1994. In 1994, split sentences (years served + probation) plus revocations of split sentences totaled only 47% of all commitments to DOC. In 2002, it was 80%. In addition, greater probation sentences are being imposed. The average years of probation per inmate for the top three crimes in Maine (sex offenses, burglary, and drug offenses) increased 79%, 230%, and 110% respectively from 1994-2002 (see attached chart-page 2).

   With caseloads approaching 200 per probation officer, the probation system is close to collapse. The subcommittee believes our motives are good. We put people on probation thinking that will help them get the services, treatment, and supervision they need. But we are killing the very thing we think is most helpful due to overuse.

   Therefore the subcommittee recommends that legislation be proposed to amend Maine sentencing laws as follows:

   a. **Amend current law to limit a judge to place a person on probation for up to four years[7] for a Class A crime, with the provision that the probation officer may, if he or she deems appropriate, request up to two additional one-year extensions. In cases involving Class B and C crimes, the judge is limited to two years of probation, but the probation officer may request two one-year extensions available. In D and E crimes, the judge is limited to one year of probation, but the probation officer may request a single one-year extension in domestic violence crimes. The current longer lengths of probation for sex offenders would not be changed.**

   b. **Enact a new sentencing alternative to give a judge an alternative punishment to probation or incarceration (i.e. the only alternative to probation now is incarceration). We suggest that this intermediate punishment be called "Community Restitution" and would include requirements such as paying restitution, performing community service work, completing treatment plans, completing GED/educational goals, and completing employment goals. Procedurally, the defendant would plead guilty, the judge would continue the case without a finding of guilt until a date certain, the defendant would provide proof of compliance to the District Attorney, and, on the date certain, the judge**

[7] Currently this is six years

would impose an unconditional discharge pursuant to 17-A MRSA §1346 or *dismissal without a conviction*. If the defendant is not in compliance, the judge would proceed to sentencing with incarceration and/or probation as available sanctions.

c. (Only if the liability and supervisory issues can be satisfactorily worked out) Amend statutes to allow a judge to sentence probation violators to up to 90 days of County Work Crew (if the local jail has such a program for inmates). The probationer goes home at night.

d. Require that every front-line probation officer review his or her caseload and that they may select up to 20% of his her cases for early termination of probation and may apply for early termination pursuant to 17-A MRSA §1202(3). The application for early termination will include the reasons for recommending early termination and victim notification. Judges and prosecutors are urged to give deference to said applications.

Additionally, the subcommittee recommends that:

f. **The Legislature's Criminal Justice Committee look at the need for 72-hour administrative hearings for probation violators. *(17-A MRSA §1205-A. Administrative preliminary hearing for arrested probationer)***

g. **The department of Corrections working with judges, district attorneys, prosecutors, law enforcement officials, and pre-trial services pilot incorporating a risk assessment process into sentencing practices.**

h. **The department of Corrections review its policies on probation revocation to ensure that intermediate sanctions are being fully utilized prior to incarceration. The department needs to develop and utilize a full range of community resources to provide intermediate sanctions options.**

Reentry and Community Transition

Members:
Senator Mary Cathcart, chair
Rep Carol Grose
Bud Doughty
Thomas Humphrey
Joseph Jabar

The sub-committee on Reentry would first like to state that the Reentry of prisoners from incarceration to the community is one of the most crucial junctures of an offender's experience with the criminal justice system. Releasing a prisoner to the community without the necessary interventions in place is simply a recipe for failure. A strong transition process-through which prisoners are prepared for release, leave prison, return to communities, and adjust to free living-is needed to protect the public effectively and reduce recidivism.
We recognize that the Department of Corrections has already undertaken a very aggressive strategy in developing a coordinated approach to prisoner Reentry to the community and we support these initiatives.

The Maine Reentry Network

The Department applied for and received a two million dollar grant from the federal Serious and Violent Offender Initiative to establish the Maine Reentry Network. This initiative is a multi-system partnership of public, and private organizations at the state, county and local levels working together to promote the successful transition of serious and violent offenders from correctional facilities back into their communities. Key program components include quality in-facility programs, Integrated Case Management System planning, seamless facility/community transition services, local sponsorship, and services for returning offenders.
The network will focus its effort on 225 offenders ages 16-25 that are transitioning from a correctional facility to a community in one of four Maine counties--- Androscoggin, Knox Penobscot, and Washington.

> ***Recommendation: The committee applauds the Department's efforts and fully supports this initiative. We realize that it is the intent of the Department to broaden the scope of this program by creating a working model for the rest of the state, but every effort should be made to assure the Maine Reentry Network walks closely in step with the Department's Adult Transition Team in order to provide a common framework and process for the development of a Statewide Reentry Program. With a limited age cohort of 16-25 and providing services to only four counties, the Network will not impact a significant number of offenders leaving our institutions. As the processes and systems are put into place by the Network in the four targeted counties, there needs to be resource coordinators in each Adult Probation Region to implement these activities in the remaining 12 counties. This would also create the framework for maintaining the program for the entire state after the expiration of the federal grant. The Juvenile Probation Division currently has five resource coordinators assisting with the transition of juveniles from their correctional facilities.***

Supervised Community Confinement

The Supervised Community Confinement Program (SCC) was established by legislative authority in July of 1993, but was not staffed for implementation until January of 1999. Five new, SCC probation positions were approved to facilitate this program. At its inception, caution was the prevailing theme guiding this process. The candidates for this program were inmates and not probationers. They were being sent home to live, but they remain prisoners subject to both institutional and SCC policy and procedures. Therefore, it is understandable that the growth of this initiative was very slow. This was also the same time that the Probation roles exploded and SCC officers were required to handle reduced caseloads in addition to SCC prisoners. Over the past four years, 432 prisoners applied for the program and only 141 were finally approved for release to the program. Of those prisoners that participated in the program, only 11 have failed with 2 new charges. This demonstrates a recidivism rate of approximately 8% over the past four years. Very few programs can show this kind of a success rate.

Over the past year there has been several changes in the program. The programs Policies and Procedures have been redesigned to help expedite the selection process, increase the applicant pool, and implement graduated sanctions. Acting on behalf of the Commissioner, a board was established that now reviews all program applications. The Associate Commissioner for Adult Services, The Director of Behavioral Services, The Victims Services Coordinator, and the Director of Classification constitute this new committee. These modifications in the process have been successful in increasing the numbers of active participants in the community. Currently there are approximately 26 individuals on the program with 6 pending final approval.

The Supervised Community Confinement Program offers one of the most immediate remedies for reducing the prison population. Unfortunately, applications have fallen off and many of those individuals that present a relatively low risk to the public are not applying. There are many possible reasons for this situation, but a few in particular stand out.

First, A large number of prisoners look at the program from a strictly economic viewpoint. They prefer to go on work release their last 6 months, stay subsidized by the institution and bank their money as opposed to going home and having to face the realities of trying make a living at minimum wage and support themselves or maybe even a family. In addition, the spouse may lose certain types of public assistance if he comes home.

Secondly, The fact that so many of the individuals have been turned down by the program following the field investigation that a large number of potential participants feel that they are not capable of putting together a viable program while residing at the institution and they are right!!! Even with the help of an institutional caseworker, the applications are poorly presented and offer little hope for approval. The one exception would be the Women's Unit at the Maine Correctional Center. The women prisoners are assisted by the Volunteers of America's Transition Program that utilizes field staff to help in the development of their applications.

> ***Recommendation: It is the opinion of this sub-committee that an investment in Resource Coordinators (or Transition Caseworkers etc.) for the Probation Regions would provide enormous returns in not only the reduction in prisoners housed in our***

institutions but also in federal dollars in the form of targeted case management funding that would become available to support the necessary treatment programs and transitional services. "What Works" research has clearly demonstrated that this kind of Transitional/Reentry planning and programming has had a significant impact on recidivism.

Sex Offender Commission

Finally, the committee feels that special consideration needs to be directed to the issue of Sex Offender reentry. We understand that the Sex Offender Commission is working on this same issue, but we would like to provide our input for their consideration. Members of this sub-committee will make a concerted effort to meet with members of the Sex Offender Commission to share ideas.

Immediate Alternatives and Housing

Members:
Kim Johnson, Chair
Elmer Berry
Martin Magnusson
Diane Sleek
Mark Westrum

Probation Caseloads. The number of offenders being placed on probation in Maine has grown to critical levels straining resources. Caseloads for some Probation Officers exceed 200, while the national average is 1 Probation Officer to 84 Probationers. Of the more then 9300 offenders placed on probation, 55% (5,122) are for conviction of Class D and E offenses (misdemeanors). About 29% of our county jail inmate population is being held or sentenced for probation revocation contributing to overcrowding conditions. In response to this growing crisis, the subcommittee offers the following recommends to reduce the number of low-risk offenders being placed on probation allowing increased supervising of higher risk probations and reducing the number of offenders in county jail for probation revocations:

Recommendation Eliminate the use of probation for low-risk Class D and E offenders with the exception of Domestic Violence and Class D and E sex offenses. This would result in a projected reduced Probation Officer to Probationer ratio of 1 to 88. Based on the research findings presented by NIC, the rate of re-offending for low-risk offenders placed on probation is greater then when not placed on probation. Additionally, this would result in a reduced projected county jail average daily population of about 180 inmates incarcerated for probation revocations.

Recommendation Maine sentencing laws should be amended to provide for an administrative court process that provides the courts the option to defer or file cases for low-risk Class D and E offender rather then placing the offender on probation. The court would then dispose of these cases upon completion of a specified period of time when the offender has not re-offended, paid restitution, completed public service, and paid fines. Comment: The full Commission needs to discuss and identify the risk assessment instrument to be administered by the court or by a service provider under contract to the courts.

Recommendation Maine sentencing laws should be revised to reduce the length of time an offender can be sentenced to probation. The average length of stay for offenders on probation has increased from 425 days in 1994 to 587 days in 2003 contributing to increased caseloads. Maine sentencing laws were revised in the past five years increasing probation sentences for all crime classes and providing for life long probation for some sex offenders contributing to increasing probation caseloads that have reached more then twice the national average of one probation officer to eighty-four probationers.

Recommendation Probation officers should make maximum utilization of existing law for early termination of probation for those offenders who have met all goals and

requirements of probation and are deemed to be a low risk. The subcommittee further recommends that the Department's Adult Community Services Division have each Probation Officer review their caseloads to identify and proceed with cases appropriate for early termination. In those cases where there is a difference of opinion between the Probation Officer and District Attorney on early termination, the case should still proceed to the court for a final determination on the petition. Additionally, the Courts should establish a statewide policy to help ensure uniform practices in each court for reviewing early termination petitions.

Immediate Prisoner Housing and Alternatives

Maine's prison and county jail populations have reached crisis levels. The Departments prison population was projected to reach 2001 inmates by the end of this November. As of November 7th, the Department actual facilities count was 1992 prisoners. The Department's budgeted facilities capacity for FY04 and FY05 is 1884. The projected prison population for June of 2004 is expected to reach 2195 prisoners resulting in a short fall of over 300 beds. Ten of our County Jails are overcrowded by as much as 105% over their rated capacity.

Recommendation: At the October 29 meeting of the full Commission, our sub committee presented a draft recommending that immediate action be taken to appropriate emergency funds to increase the Department's adult facilities budgeted capacity to provide some relief for overcrowded conditions and correctional staff working overtime at these state facilities. This would be accomplished by opening vacant units at the Maine Correctional Center (30 beds), and the Charleston Correctional Facility (100 beds). Beds space would be increased at the Maine State Prison in Warren by adding 32 beds to its medium security unit. Additionally 40 prisoners were proposed to be boarded in the New Hampshire Correctional System. This recommendation provided a total increased capacity of 212 beds at an estimated cost of $4,313,237.

Revised Recommendation After much discussion at our last subcommittee meeting taking into considering the potential impact of other recommendations being made, such as increased use of Supervised Community Confinement and Transitional Programming, our sub committee has revised its recommendation to increase capacity by reducing the number of beds being proposed from 212 beds to 122 beds resulting in a reduction of the proposed cost of about $2,000,000, from $4,313,237 to $2,396,956. Even with the proposed increase in capacity recommended here, population projects estimate the Department will have a bed deficit in FY05 of 200 beds.

Recommendation With the opening of the new York county jail, and a surplus of bed space at Cumberland, bed space is available for those ten counties with overcrowding problems. The problem faced by these ten counties is locating where surplus beds are available. Our subcommittee recommends that the Maine Sheriffs' Association, Maine County Commissioners' Association and Maine Department Of Corrections Inspection Division develop a centralized statewide system of reporting available bed space on a daily basis that provides a single point these ten counties could contact to located

available beds. One possibility would be to maintain the central data base of available bed space on the Maine Sheriffs' Association website.

Recommendation The subcommittee recommends that the Department create additional incentives to encourage more low-risk offenders to participate in Supervised Community Confinement programs and transitional programming. Increased utilization of these programs for low-risk offenders will make additional minimum-security bed space available and improve Reentry programs for inmates. Another possible incentive would be to have the Department revise their existing policy and award meritorious good time for participation in these programs specifically. Participation in Supervised Community Confinement also provides the added benefit of a period of supervision in the community for those prisoners who will not be on probation once released from prison.

Recommendation The subcommittee recommends that funds be appropriated to provide a financial incentive to those counties who demonstrate a greater utilization of Community Corrections Funds for Community Correction programs such as pre-trial diversion, alternative sentencing, day report, home release, electronic monitoring, etc. Presently counties are required to use 20% (about $1.2 million statewide) of CCA funds for these programs. The subcommittee recommends increasing CCA funding earmarked for community programs by 8% when a county uses of at least 50% of CCA funds for these programs. Increased use of these programs would make additional secure bed space available in jail facilities and help reduce the cost of housing inmates to county jails.

Recommendation: An additional 8% of Community Corrections Funds should be appropriate to provide counties a financial incentive to develop and operate regional jail facilities. A clear definition of jail regionalization needs to be developed to clearly define what facilities and/or services and programs would constitute a regional jail to qualify for the proposed additional 8% funding. If the Commissions work is extended, regionalization of county jails facilities, programs and services is one area that requires further review by the Commission.

Recommendation The subcommittee recommends that 30-A MRSA Home Release be amended to permit low-risk sentenced inmates in county jails to participate in this program earlier during their sentence. The present law requires that an inmate complete one third of their sentence before they can apply for the program. Presently Home Release is not being fully utilized by counties.

Recommendation The subcommittee recommends that the courts develop a fund to pay Bail Commissioner fees for those offenders held in jail who are appropriate for PR bail but remain in jail because they do not have the funds to pay the Commissioners fee. We also recommend that this Study Commission review existing bail laws and make recommendations for change. Jail beds need to be viewed as a scarce resource reserved to incarcerate pre-trail offenders who are higher risks.

Recommendation The subcommittee recommends that the Courts, Prosecutors, Department and County Jails support and make greater utilize of existing community

programs such as Drug Court, Substance Treatment, Day Reporting and Public Service as an alternative to incarceration. A greater utilization of these programs will help to ensure the availability of jail and prison capacity for higher risk offenders who pose a greater risk to the public.

Recommendation The subcommittee recommends each county establish a Case Management Committee to weekly review the status of pre-trail inmates held in jail to help prevent these offenders from languishing for long periods of time in jail. The Case Management Committee should be comprised of representation from Law Enforcement, District Attorney, Corrections Officials, Human Services and Defense Representatives.

County Jail Deaths Inmate deaths in correctional facilities over the past two years have reached crisis levels. Twelve deaths have occurred during the past two years. The number of offenders with mental illness and addiction requiring medical detoxification has reached alarming levels in county jails that do not have funds nor the capability to care for and treat these cases. Several studies have been conducted and recommendations made to begin to address the issue of the mentally ill in jails. However, the problems persist.

Recommendation The subcommittee recommends that immediate steps be taken to develop linkages between the Department of Behavioral and Development Services, community mental and health resources, and jails to provide treatment and hospitalization to these inmates.

Diversion and Community Alternatives

Members:
Steven Rowe, Chair
Carol Carothers
Mark Dion
Evert Fowle
Leigh Saufley

Overview

Maine has the lowest rate of incarceration in the nation. Although our state has the lowest violent crime rate and the fifth lowest property crime rate in the nation, jail, and prison overcrowding have become a reality. Since 1995, Maine's prisoner population has increased by 37%. This growth rate is faster than that of our neighboring states New Hampshire and Vermont, who also have low crime rates. Since 2000, Maine's prison population has increased by 20 percent. Maine's new prison, built to provide capacity for ten years, is now beyond capacity. With just two exceptions (Cumberland and York), Maine's jails are over capacity on most days. Immediate action is needed to deal with a criminal justice system which has the fastest growing inmate growth in the nation and a higher than average percentage of inmates with mental illness and/or substance abuse problems (25% of inmates receive mental health services in prison; 30% in jails).

No single strategy, much less a single program, will by itself solve these problems. Rather, Maine needs a comprehensive continuum of diversion/alternatives which has broad-based support and acceptance from criminal justice stakeholders, policy makers, victims, and the community. The continuum should include various programs and degrees of supervision and treatment matched to the risks and needs of the individual. These strategies must be based on "what works" to reduce recidivism. Victim and community safety must be paramount.

This report offers suggestions for both short- and long-term solutions. We know that we can help prevent delinquency through investments in parent education, early childhood prevention and intervention services, well-staffed child welfare systems, and adequate behavioral health services. We also know that juveniles are pushed further into the system through over-reliance on incarceration and other out-of-home placements, under-investment in community-based services, and aggressive punishment for low-level offending. Hence this report also contains recommendation for improving outcomes for children and families to prevent delinquency, entrance into the juvenile system, and further movement into the adult system.

To promote and sustain these desired systemic changes, a multi-disciplinary and collaborative effort among criminal justice stakeholders is critical. We must begin by building consensus and by promoting education and awareness among policy makers and other leaders in the criminal justice system.

Guiding Principles for Diversion and Alternatives

1. All Maine diversion programs must be designed based on assessed need (i.e., who and where are populations at risk of arrest and incarceration or re-arrest and re-incarceration) and evidence based practices shown to reduce recidivism.

2. Maine's jail diversion programs must be adequately funded and be given significant priority as is funding for incarceration.
3. Maine must identify juveniles who are at risk of entry into the criminal justice system and divert them and/or offer alternatives to incarceration when appropriate. Diversion must be based on an understanding of risk factors that lead to juvenile justice system involvement, followed by the provision of supports and services known to be effective in preventing entry into that system. The supports and services must cross multiple systems including the educational system, social welfare system, and behavioral health system. For youth who do not pose an immediate threat to public safety, most of the winning strategies work with young people in their own homes and communities, rather than institutions. They focus heavily on the family environment, both in responding to, and preventing, juvenile crime.
4. Maine's policies on jail and prison diversion must be based on the understanding that treatment, not incarceration, is a more sensible, cost effective, and humane response to low-risk offenders. Maine's policies must be based on the consensual understanding that intensive correctional treatment services for low-risk offenders can increase recidivism.
5. Maine's mental health system does not have sufficient resources of a system in place to respond to prisoners whose primary presenting problem is mental illness. Detainees who are severely mentally ill do not receive prompt access to evaluation or treatment. Maine's mental health system must be retooled to address these individuals.
6. Maine's jail diversion programs must recognize that relapse is part of behavioral health disorders. When appropriate, such programs should accommodate and tolerate a certain level of relapse without resorting to incarceration or other punishments.
7. Maine's jail diversion programs must be designed to collect data that will allow for the evaluation of their outcomes in reducing arrest, incarceration, re-arrest, and re-incarceration. This data must be used to redesign, maintain or eliminate programs that are not effective.
8. All stakeholders (the public, the press, the courts, the victims, etc.) must be cross educated about the criminal justice system, the outcomes of its current policies and practices, and the big picture of how each system affects the others.

Recommendations for Consideration

Pre-booking Diversion

1. Expand Maine's Crisis Intervention Team (CIT) programs and other evidence-based diversion models to additional municipalities CIT is an evidence-based pre-booking diversion model which uses specially-trained police officers to diffuse psychiatric emergencies in the community. The expansion should be based on a needs assessment of the volume of policy responses to psychiatric, domestic violence, and substance abuse emergency calls. BDS crisis team data should be used to identify high volume. These areas should have specialized emergency room procedures accommodate law enforcement officers who opt to bring a client to the ER instead of to jail.*
2. Provide training to dispatchers (Houston and Florida models) to recognize psychiatric calls and to respond appropriately.*

Post-Booking Diversion

1. Revise the statutes to create a new sentencing option, "administrative release," that allows the court to "sentence" low-risk offenders (as determined by the LSI or other valid and reliable assessment tool) to an un-supervised, non-probation option where appropriate. This option will require some form of accountability (e.g., fines, restitution, community service) that must be fulfilled and reported back to the court before the case is closed.*
2. To the extent that resources allow, modify the statutes to require courts, prosecutors, and others to examine all diversion alternatives and to require a risk assessment on all offenders for whom incarceration is possible, prior to sentencing. Modify the statutes to require valid and reliable risk assessment (e.g., LSI) pre-sentence.
3. Provide financial resources so that the LSI or other valid and reliable risk assessment tool may be administered in appropriate cases as early in the criminal justice system as is possible, but at a minimum prior to sentencing.
4. Establish "day reporting" as a sentencing option.
5. Create Community Corrections Boards, administered by the sheriffs. These boards should include representatives from multiple stakeholders (to include victims, advocates, prosecutors, and defense attorneys). The Board's charge should be to assist the sheriffs to develop and market alternative community corrections programs.*
6. Encourage sheriffs to operate "community restitution centers," similar to current work release programs, which would allow inmates to work, obtain treatment, and complete their sentences in settings other than the jail.
7. Expand the responsibilities of the Adult Drug Court Coordinator within the Judicial Branch to include all criminal diversion programs.
8. Create interdepartmental "boundary spanner" positions in each of the state's eight prosecutorial districts. A boundary spanner is a person who a) possesses strong communication skills and a keen understanding and appreciation of all criminal justice, behavioral health, and substance abuse treatment programs in the state; (b) helps to bridge the barriers between systems, and (c) serves as a case manager to identify and assist individuals eligible for programs.
9. Create financial incentives for jails that establish "what works" and other diversion alternatives – offering higher state funding percentages to those jails that implement alternatives.

Pre-Sentencing Diversion

1. Create post-plea, pre sentencing diversion that would allow the District Attorney to expunge records or dismiss charges at any time prior to sentencing, if the court determines that the person has successfully completed the diversion program and presents no future risk to the community.

Probation/Revocation Diversion

1. Create a system to screen, assess, and divert those found eligible and charged with probation violations into a community-based continuum of services. Such services would

seek to divert the probationer from a more lengthy court proceeding and future jail or prison term. There would not be a special docket created. Community safety, risk assessment, and immediate availability of services would be paramount. Successful completion to the diversion plan could result in a dismissal of a motion to revoke probation with the agreement of the prosecutor. The program will include the following components:

- 150 probation clients to be targeted for services in each location
- Rapid screening, assessment and placement of clients into the program
- Two locations: Cumberland County-Penobscot/Hancock counties, with Kennebec County as a potential third location
- Resource Center and Day Reporting facility
- Probation Supervision
- Drug and Alcohol Testing
- Education, Job, and Vocational Services
- Referral to existing effective treatment programs
- Judicial review and monitoring
- Program data management system

Juvenile Diversion

1. Develop and pilot a Community Assessment Center (CAC) that combines assessment, advocacy, and direct service to high-risk offenders to divert appropriate juveniles from incarceration. CACs provide a 24-hour centralized point of intake and assessment for juveniles who have come into contact with the juvenile justice system.
2. Expand intensive family-oriented and home-based services such as Multi-systemic Therapy (MST) and Functional Family Therapy (FFT), for delinquent youth as an alternative to incarceration, standard probation, and placement into residential treatment centers or group homes. Multi-systematic Therapy is an intensive family- and community-based treatment that addresses the multiple determinants of serious antisocial behavior in juvenile offenders. Functional Family Therapy is an outcome-driven prevention/intervention program for youth who have demonstrated the entire range of maladaptive, acting out behaviors and related syndromes. The US Department of Justice's Office of Juvenile Justice and Delinquency Prevention selected both MST and FFT as Blueprint programs for violence prevention. Each program costs less than $5,000 per young person.
3. Establish short-term treatment foster care with counseling and parent management training for parents as an alternative to incarceration or group home placements for chronic but not dangerous youth offenders. Multidimensional Treatment Foster Care is also a Blueprint Program that has dramatically reduced recidivism. Require that existing foster care services adopt this model. Also needs further study – see items for further consideration
4. Expand the wraparound planning model for adolescents with serious emotional disturbances.
5. Support and fund Blueprint mentoring programs such as Big Brothers/Big Sisters.

Delinquency Prevention

1. The state should support and adequately fund proven, effective early childhood prevention and intervention programs. Existing programs such as home visits (beginning during pregnancy), parenting education and quality childcare should be expanded to ensure access by all families who need them.
2. The state should support and fund Blueprint prevention program such as the Incredible Years Series. The Incredible Years Series is a set of three comprehensive, multi-faceted, and developmentally-based curriculums for parents, teachers, and children designed to promote emotional and social competence and to prevent, reduce, and treat behavior and emotion problems in young children.

Systems Improvements

1. Offer training and education for prosecutors, defense attorneys, judges, victim groups and other stakeholders on the "What Works" literature.
2. Amend Maine's confidentiality laws to facilitate information sharing by state and county agencies on shared clients in order to provide more effective and efficient services to juvenile and adult offenders.
3. Analyze state and county management information systems with the objective of increasing the compatibility of systems and the sharing of information among agencies.
4. Establish a printed and web-based directory of resources and diversion alternatives.
5. Establish a Certification Review Process for programs serving youthful and adult offenders which incorporates standards based on the principles of effective correctional intervention. Insist that all contracts and future funding be based on established criteria and program evaluation. Create incentives for the establishment of these evidence-based practices.
6. Maintain the Research and Evaluation Council to coordinate on-going research and evaluation of existing programs and the development of more blueprint programs. Fund this Council to complete ongoing analysis of recidivism data, population, and program needs. Require the council to report annually to the Legislature so that Council studies can be used to make data-based decisions about funding and programs.
7. Use marketing and public relations strategies to education key legislators and stakeholders on criminal justice research to bridge the gap between science-based research, public policy, and funding.

Items for Further Consideration

1. Lack of diversion placements and community treatment for offenders with mental health and substance abuse problems.
2. Inabilities of state and county agencies to access each other's information databases to more fully understand an offender's medical, behavioral, and treatment history and thereby provide more effective and efficient treatment.

3. Transition of young offenders to the adult system –how to insure that low-risk juveniles don't automatically move into the adult system, losing their treatment and other programs at age 18, regardless of level of risk or progress toward productive community life.
4. Revision of the protective custody laws to allow a police officer to defer to a crisis worker who indicates protective custody is needed (modeled on Oregon's statute).
5. Creation of a statutory mandate that diverted individuals who need immediate access to treatment obtain it in the location closest to them and in the least restrictive setting appropriate. It will be important not to create a special "class" of people who receive services while others are waiting.
6. Addition of the LSI screening questions to current jail intake screening procedures, allowing jails to house inmates based on assessed risk and to design programming based on assessed risk.
7. Provide all Probation and Parole, Jail, Prison, judicial, and defense staff with a statewide resource director, similar to that prepared by NAMI.

*Short-term, low cost, immediate

I. Votes on Commission Recommendations

Sub-committee	Recommendation	Commission Action
	1. Extend the charge of the Commission to Improve the Sentencing, Supervision, Management, and Incarceration of Prisoners through January 1, 2005, to allow the Commission to address the outstanding issues identified in this report. *(121st Legislature)*	Consensus Agreement
PROBATION CASELOADS/COMMUNITY CORRECTIONS		
Immediate 1	2. Limit the use of probation: Limit the use of probation for Class D&E offenses to domestic violence, sex offenders, repeat OUI offenders (2 or more prior convictions in the previous 10 years), by requiring the courts to apply other alternatives to include Deferred Disposition first and then Administrative Release. Individuals may be placed on probation in unusual cases where serious risk to public safety exists as determined by the court. *(121st Legislature)*	The Commission voted on multiple probation recommendations as a package VOTE Yes: 13 No: 1
Immediate 2, Sentencing 17,Diversion 3	3. Create deferred disposition: Enact a new sentencing alternative to give a judge an alternative punishment to probation or incarceration (i.e. the only alternative to probation now is incarceration). We suggest that this intermediate punishment be called "Deferred Disposition" and would include requirements such as paying restitution, performing community service work, completing treatment plans, completing GED/educational goals, and completing employment goals. Procedurally, the defendant would plead guilty, the judge would continue the case without a finding of guilt until a date certain, the defendant would provide proof of compliance to the District Attorney, and, on the date certain, the judge would impose an unconditional discharge pursuant to 17-A MRSA §1346 or the DA may dismiss without a conviction. If the defendant is not in compliance, the judge would proceed to sentencing with incarceration and/or probation as available sanctions. *(121st Legislature)*	
Diversion 3	4. Allow "Administrative Release" from probation: Revise the statutes to create a new sentencing option, "administrative release," that allows the court to sentence Class D&E offenders to an unsupervised, non-probation option where appropriate. This option will require some form of accountability (e.g. fines, restitution, or community service) that must be fulfilled and reported back to the court before the case is closed. Probation officers to immediately convert existing probationers to administrative release status. *(121st Legislature)*	
Immediate 3, Sentencing 16	5. Reduce probation sentences: Maine sentencing laws should be revised to reduce the length of time an offender can be sentenced to probation to: Class A - 4 years, Class B - 3 years, Class C - 2 years, Class D - 1year and Class E - 1 year. The current length for sexual offenders would not be changed. *(121st Legislature)*	

Immediate 4, , Sentencing 19	6. Maximize early termination of probation: Encourage probation officers to make maximum utilization of existing law for early termination of probation for those offenders who have met all goals and requirements of probation and are deemed to be a low risk. Have each probation officer review their caseloads to identify and proceed with cases appropriate for early termination. In those cases where there is a difference of opinion between the Probation Officer and District Attorney on early termination, the case should still proceed to the court for a final determination on the petition. The application for early termination will include the reasons for recommending early termination and victim notification. Judges and prosecutors are urged to give deference to said applications. Additionally, the Legislature should clarify the policy to help ensure uniform practices in each court for reviewing early termination petitions. *(121st Legislature)*	
Sentencing 18	7. Authorize county work crews: (Only if the liability and supervisory issues can be satisfactorily worked out) Amend statutes to allow a judge to sentence probation violators to up to 90 days of County Work Crew (if the local jail has such a program for inmates). The probationer goes home at night. *(121st Legislature)*	
Immediate 7	8. Encourage supervised community confinement participation: The Department should create additional incentives to encourage more low-risk offenders to participate in Supervised Community Confinement programs and transitional programming. Another possible incentive would be to have the department revise their existing policy and award meritorious good time for participation in these programs specifically. *(121st Legislature)*	Consensus Agreement
Reentry 2	9. Create resource coordinators: Create two resource coordinator positions to support the Reentry network for high-risk offenders and to support expansion of Supervised Community Confinement statewide. These positions need to have cross system training and education. The Department of Corrections will investigate the most cost-effective way to create these positions. *(121st Legislature)*	Consensus Agreement
GOOD TIME		
Sentencing 8A	10. Increase good time limits in county facilities. Increase the amount of good behavior good time inmates in county facilities can earn from two days per month to four. *(121st Legislature)*	Vote: Yes-12, No-3
Sentencing 8B,	11. Increase good time limits in state facilities. Increase the amount of good behavior good time inmates in state facilities can earn from two days per month to four, excluding gross sexual assault and murder. *(121st Legislature)*	Vote: Yes-9, No-3, Abstain-3
Sentencing 14	12. Increase WERC time limits. Increase the amount of WERC time inmates in state facilities can earn from three days per month to five.	Vote: Yes-6, No-5, Abstain-4
Sentencing 10	13. Create new good time category. Create a new category of good time called "Work, Education, and Rehabilitation Credits" (WERC) to more accurately reflect the program's intent. *(121st Legislature)*	Vote: Yes-13, No-0, Abstain-2
Sentencing 11	14. Expand WERC time. Expand the programs and activities in which inmates can participate to earn WERC time to include education programs (GED, professional certificate, technical/vocational certification, post-secondary degree), work programs (including community work programs), behavioral change programs (consistent with "what works") such as sex offender treatment and substance abuse programs (AA, substance abuse, etc.). *(121st Legislature)*	Vote: Yes-13, No-0, Abstain-2
Sentencing 12	15. Require transition case plan for WERC time. Require inmates to have and follow a transition case plan in order to earn WERC time. *(121st Legislature)*	Vote: Yes-13, No-0, Abstain-2
Sentencing 13	16. Factor participation quality into WERC time benefits. Prorate WERC time to reflect the quality of the inmate's participation (i.e. they show up on time, they show up every day for which they are assigned work, their work performance is adequate). In addition, inmates will only be able to earn the maximum amount of WERC time for work credits at the end of their sentence (based on their transition plan) for	Vote: Yes-13, No-0, Abstain-2

	participation in community-based work programs. *(121st Legislature)*	
Sentencing 9	17. Allow good time while in jail awaiting sentencing: Provide for inmates to earn the same amount of good time while awaiting trial and sentencing. *(121st Legislature)*	Vote to remove from deferred list Yes-8, No-2
	SENTENCING CHANGES	
Sentencing 1	18. Permit judicial discretion on mandatory minimum sentences. Provide judges the discretion to deviate from required mandatory minimum sentences in cases with extraordinary circumstances. In deviating from the mandatory minimum sentence, the presiding justice shall consider all relevant factors, including: 1. The nature of the criminal act, 2. The defendant's prior record or lack thereof; 3. The recommendations of the victim or the victim's family and the prosecuting attorney; 4. The defendant's prospects for rehabilitation, credible demonstration of remorse and a comprehension of the consequences of the defendant's actions; and 5. The age, background, and physical and mental condition of the defendant, the defendant's family circumstances, and whether the criminal act was an isolated aberration in the life of the defendant. *(121st Legislature)*	Vote: Yes-14, No-1
Sentencing 2	19. Place moratorium on sentencing increases. Impose a one-year moratorium on any amendments to the state's criminal code that would increase sentences imposed, increase classification of sentences, or change classification on inmates until an impact study can be accomplished to determine the impact (including costs) of sentences on inmate population and a study of sentencing ranges with a prospect of increased differentiation within ranges, and other actions can be taken to alleviate the current overcrowding crisis faced in state prisons and county jails. Exempt the sentencing recommendations from the Commission to Improve Community Safety and Sex Offender Accountability. *(121st Legislature)*	Vote: Yes-12, No-1, Abstain-2 Vote: Yes-8, No-1
Sentencing 3	20. Reduce auto theft to Class D. Amend the state Criminal Code to change Burglary of a Motor Vehicle from a Class C to a Class D crime. (17-A MRSA § 405(2). *(121st Legislature)*	Consensus Agreement
Sentencing 4	21. Increase minimum values of stolen property used to classify theft crimes. Amend the state Criminal Code to change standards for theft as follows: The value of the property is more than $3,000 but not more than $10,000. Violation of this subparagraph is a Class C crime (currently Class C begins at $1,000); and The value of the property is more than $1,000 but not more than $3,000. Violation of this subparagraph is a Class D crime (currently Class D begins at $500) (17-A Section 353-1, sub (4) and sub (5)). *(121st Legislature)*	Consensus Agreement
Sentencing 5	22. Reduce certain supervised community confinement violations from felony to misdemeanor. Amend the state Criminal Code to make it a misdemeanor (Class D) if an inmate fails to appear for work, for school or for a meeting with that person's supervising officer while an inmate is on Supervised Community Confinement, rather than a felony (Class C). The subcommittee believes this may be one reason that inmates do not participate in SCC. (17-A MRSA § 755 1-B(A)). *(121st Legislature)*	Consensus Agreement
Sentencing 15	23. Require victim notification. Require that every victim be notified of the Department of Corrections toll-free telephone number that they can call to learn of the earliest possible projected release date of their perpetrator (if someone were to earn all possible time from their first day of sentence, which is below 35%). In addition, when the department's web-based public access portal comes on line in an estimated two years, every victim will be notified of how they can go on-line and look at the earliest possible projected release dates of everyone in the state corrections system. *(121st Legislature)*	Consensus Agreement
Sentencing 21,	24. Pilot risk assessment process in sentencing. The Department of Corrections	Consensus

Diversion 4	working with judges, district attorneys, prosecutors, law enforcement officials, and pre-trial services pilot incorporating a risk assessment process into sentencing practices. *(122nd Legislature)*	Agreement
ADULT DIVERSION		
Diversion 1	25. Expand effective diversion programs. Expand Maine's Crisis Intervention Team (CIT) programs and other evidence-based diversion models to additional municipalities. The expansion should be based on a needs assessment of the volume of policy responses to psychiatric, domestic violence, and substance abuse emergency calls. BDS crisis team data should be used to identify high volume. These areas should have specialized emergency room procedures accommodate law enforcement officers who opt to bring a client to the ER instead of to jail. *(122nd Legislature)*	Consensus Agreement
Diversion 2	26. Train dispatchers to recognize psychiatric calls. Provide training to dispatchers (Houston and Florida models) to recognize psychiatric calls and to respond appropriately. *(121st Legislature)*	Consensus Agreement
Diversion 5	27. Support effective risk assessment tools. Provide financial resources so that the LSI or other valid and reliable risk assessment tool may be administered in appropriate cases as early in the criminal justice system as is possible, but at a minimum prior to sentencing. *(122nd Legislature)*	Consensus Agreement
Diversion 7	28. Create community corrections boards. Recommend the creation of Community Corrections Boards, administered by the sheriffs. These boards should include representatives from multiple stakeholders (to include victims, advocates, prosecutors, defense attorneys, and local law enforcement). Their charge should be to assist the sheriffs to develop and market alternative community corrections programs, including looking at "day reporting" as a sentencing option. *(121st Legislature)*	Consensus Agreement
Diversion 8	29. Form county-level community restitution centers. Encourage sheriffs to operate "community restitution centers," similar to current work release programs, to allow inmates to work, obtain treatment, or complete their sentences in settings other than the jail. *(121st Legislature)*	Consensus Agreement
Diversion 9	30. Place diversion programs under Adult Drug Court Coordinator. Expand the responsibilities of the Adult Drug Court Coordinator within the Judicial Branch to include all criminal diversion programs. *(121st Legislature)*	Consensus Agreement
Diversion 10	31. Create "boundary spanners." Create interdepartmental, interjurisdictional "boundary spanner" positions in each of the state's eight prosecutorial districts. A boundary spanner is a person who a) possesses strong communication skills and a keen understanding and appreciation of all criminal justice, behavioral health, and substance abuse treatment programs in the state; (b) helps to bridge the barriers between systems, and (c) serves an information conduit and coordinator to identify and assist individuals eligible for programs. *(122nd Legislature)*	Consensus Agreement
Diversion 13	32. Divert appropriate probation violators into community-based diversion services. Create a system to screen, assess, and divert those found eligible and charged with probation violations into a community-based continuum of services. Such services would seek to divert the probationer from a more lengthy court proceeding and future jail or prison term. There would not be a special docket created. Community safety, risk assessment, and immediate availability of services would be paramount. Successful completion to the diversion plan could result in a dismissal of a motion to revoke probation with the agreement of the prosecutor. The program will include the following components: 1. 150 probation clients to be targeted for services in each location; 2. Rapid screening, assessment and placement of clients into the program; 3. Two locations: Cumberland County-Penobscot/Hancock counties, with Kennebec County as a potential third location; 4. Resource Center and Day Reporting facility; 5. Probation Supervision; 6. Drug and Alcohol Testing; 7. Education, Job, and	Consensus Agreement

	Vocational Services; 8. Referral to existing effective treatment programs; 9. Judicial review and monitoring; and 10. Program data management system. *(122nd Legislature)*	
Diversion 26	33. Maintain the Research and Evaluation Council. Maintain the Research and Evaluation Council to coordinate on-going research and evaluation of existing programs and the development of more blueprint programs. Perform ongoing analysis of recidivism data, population, and program needs. Encourage the council to report annually so that council studies can be used to make data-based decisions about funding and programs. *(121st Legislature)*	Consensus Agreement
Diversion 28	34. Develop confidentiality training. Require DOC, BDS, DHS, DOE to develop joint training on confidentiality issues and how to share information appropriately within existing law. *(121st Legislature)*	Consensus Agreement
Immediate 12, Sentencing 22	35. Rely more on community programs as sentencing options. Have the courts, prosecutors, department and county jails support and make greater utilization of existing community programs such as Drug Court, Substance Treatment, Day Reporting and Public Service as an alternative to incarceration. *(121st Legislature)*	Consensus Agreement
JUVENILE DIVERSION		
Diversion 14	36. Create community assessment center. Develop and pilot a Community Assessment Center (CAC) that combines assessment, advocacy, and direct service to high-risk offenders to divert appropriate juveniles from incarceration. CACs provide a 24-hour centralized point of intake and assessment for juveniles who have come into contact with the juvenile system. *(122nd Legislature)*	Consensus Agreement
Diversion 15	37. Rely more on family-oriented and home-based services for youth offenders. Expand intensive family-oriented and home-based services such as Multi-systemic Therapy and Functional Family Therapy, for delinquent youth as an alternative to incarceration, standard probation, or placement into residential treatment centers/group homes. *(122nd Legislature)*	Consensus Agreement
Diversion 16	38. Establish short-term foster care for nonviolent youth offenders. Establish short-term treatment foster care with counseling and parent management training for parents as an alternative to incarceration or group home placements for chronic but not dangerous youth offenders. Multi-dimensional Treatment Foster Care is a Blueprint program that has dramatically reduced recidivism. Require that existing foster care services adopt this model. *(122nd Legislature)*	Consensus Agreement
Diversion 17	39. Expand wraparound planning model. Expand the wraparound planning model for adolescents with serious emotional disturbances. *(122nd Legislature)*	Consensus Agreement
Diversion 18	40. Support and fund Blueprint juvenile mentoring programs. Support and fund Blueprint juvenile mentoring programs. *(122nd Legislature)*	Consensus Agreement
Diversion 19	41. Support early childhood prevention and intervention programs. The state should support and adequately fund proven, effective early childhood prevention and intervention programs. Existing programs such as home visits (beginning during pregnancy), parenting education and quality childcare should be expanded to ensure access by all families who need them. *(122nd Legislature)*	Consensus Agreement
Diversion 20	42. Support Blueprint prevention programs. The state should support and fund Blueprint prevention program such as the Incredible Years Series. The Incredible Years Series is a set of three comprehensive, multi-faceted, and developmentally-based curriculums for parents, teachers, and children designed to promote emotional and social competence and to prevent, reduce, and treat behavior and emotion problems in young children. *(122nd Legislature)*	Consensus Agreement
Diversion 21	43. Educate stakeholders on "What Works." Offer training and education for prosecutors, law enforcement officers, defense attorneys, judges, victim groups and other stakeholders on the "What Works" literature. *(121st Legislature)*	Consensus Agreement
Diversion 23	44. Improve information sharing among agencies. Require appropriate state agencies	Consensus

	(e.g. BIS, McJustice, DHS, BDS, Education) to analyze state and county management information systems with the objective of increasing the compatibility of systems and the sharing of information among agencies. *(122nd Legislature)*	Agreement
Diversion 24	45. Create diversion directory. Establish a printed and web-based directory of resources and diversion alternatives. *(121st Legislature)*	Consensus Agreement
Diversion 25	46. Review programs to ensure effectiveness. Establish a Review Process for publicly-funded programs serving youthful and adult offenders to assist programs in their efforts to incorporate standards based on the principles of effective correctional intervention whose standards are reviewed against nationally-accepted standards. *(122nd Legislature)*	Consensus Agreement
	MENTAL HEALTH	
Immediate 14	47. Develop a plan to address mental illness. Require BDS, DOC, and county sheriffs to develop a joint plan of action to address mental illness in the criminal justice community and to prevent inmate deaths. The plan will be brought back to this commission before end of 2nd Regular Session. If the commission is not extended, require the departments to proceed administratively. *(121st Legislature)*	Consensus Agreement
	IMMEDIATE AND EMERGENCY NEEDS	
Immediate 5	48. Open additional bed spaces. Appropriate emergency funds to increase the Department's adult facilities budgeted capacity to provide some relief for overcrowded conditions and correctional staff working overtime at these state facilities. This would be accomplished by opening vacant units at the Maine Correctional Center (30 beds), and the Charleston Correctional Facility (50 beds). Beds space would be increased at the Maine State Prison in Warren by adding 32 beds to its medium security unit. *(121st Legislature)*	Vote: Yes-10, No-1, Abstain-3
	COUNTY	
Immediate 6	49. Develop a county bed space database. The Maine Sheriffs' Association, Maine County Commissioners' Association and Maine Department of Corrections Inspection Division should develop a centralized statewide system of reporting available bed space on a daily basis that provides a single point these ten counties could contact to located available beds. One possibility would be to maintain the central data base of available bed space on the Maine Sheriffs' Association website. *(121st Legislature)*	Consensus Agreement
Immediate 8, Diversion 11	50. Reward counties that use CCA funds for diversion programs. Funds should be allocated to provide a financial incentive to those counties who demonstrate a greater utilization of Community Corrections Act (CCA) funds for community correction programs such as diversion, alternative sentencing, day report, home release, electronic monitoring, etc. Presently counties are required to use 20% (about $1.2 million statewide) of CCA funds for these programs. The subcommittee recommends increasing CCA funding earmarked for community programs by 8% when a county uses of at least 50% of CCA funds for these programs. Any of the 20% mandatory use funds not spent by counties on diversion programs as required shall be offset against the following year's allocation to counties that use the funds for diversion programs. *(121st Legislature)*	Consensus Agreement
Immediate 13	51. Establish case management committees. Encourage each county to establish a Case Management Committee to review the status of pre-trial inmates held in jail to help prevent these offenders from languishing for long periods of time in jail. *(121st Legislature)*	Consensus Agreement

DEFERRED FOR FURTHER STUDY		
Immediate 9	52. Appropriate more Community Corrections Funds as an incentive to regionalize. Additional Community Corrections Funds should be appropriated to provide counties a financial incentive to develop and operate regional jail facilities. A clear definition of jail regionalization needs to be developed to clearly define what facilities and/or services and programs would constitute a regional jail to qualify for the proposed additional funding. If the commission's work is extended, programs and services and specific proposals are areas that require further review by the commission.	
Immediate 10	53. Consider using Home Release more. Examine why Home Release is not presently being fully used by counties. 30-A MRSA should be amended to permit low-risk sentenced inmates in county jails to participate in this program earlier during their sentence. The present law requires that an inmate complete one third of their sentence before they can apply for the program.	
Immediate Alternatives 14	54. Address problems related to offenders with mental health and substance abuse issues. The commission should evaluate the joint plan of action between BDS and DOC to address mental illness in the criminal justice community and to prevent inmate deaths and explore solutions to the lack of diversion placements and community treatment for offenders with mental health and substance abuse problems. This issue will be a major focus of this commission (if the commission continues).	
Diversion 22	55. Examine confidentiality laws. Examine federal and state confidentiality laws to facilitate information sharing by state and county agencies on shared clients in order to provide more effective and efficient services to juvenile and adult offenders.	
Sentencing 6	56. Evaluate current sentencing, plea bargaining, and pre-trial services. The Sentencing Institute scheduled for December 2004 be used as a forum for district attorneys, defense attorneys, prosecutors, corrections officials, and law enforcement officials to consider effective sentencing practices to determine what's appropriate and to establish priorities and uniform understanding of sentencing, plea bargaining, and pre-trial practices. For example, practitioners should consider straight sentences, completely probated sentences, and/or sentences involving community restitution. Practitioners should reflect on appropriate lengths of incarceration and/or probation (for example, does 8 years of incarceration accomplish anything more than 7 years? Or 4 years of probation as opposed to 3 years?).	
Sentencing 7, 2	57. Reassess mandatory minimums. This commission or some other suitable body should conduct a review of all mandatory minimum sentences and propose amending any they find are no longer necessary by September 30, 2004. This commission should study the impact of sentences on inmate population. This commission should determine the impact (including costs) of sentences on inmate population and study Maine's sentencing ranges with a prospect of increased differentiation within ranges.	
Sentencing 23	58. Ensure sentencing decisions take into account availability of placement and programs. Enact a statute to require any sentencing judge to take into consideration the availability of placement (or lack thereof) to a jail or DOC facility or to probation. This consideration must include the availability (or lack thereof) of meaningful correctional programs and appropriate treatment/services.	
Immediate 11	59. Reassess and improve bail laws. Review existing bail laws and make recommendations for change.	
Sentencing 20	60. Consider needs for 72-hour administrative hearing for probation violators. The Legislature's Criminal Justice Committee look at the need for 72-hour administrative hearings for probation violators. (17-A MRSA §1205-A. Administrative preliminary hearing for arrested probationer)	
	61. Expand Home Monitoring. This Commission should look at ways to increase the use of home monitoring with its new technologies in both state and county facilities.	

J. Minority Reports

COMMISSION TO IMPROVE THE SENTENCING, SUPERVISION
MANGEMENT AND INCARCERATION OF PRISONERS

MINORITY REPORT RESPECTFULLY SUBMITTED BY
DISTRICT ATTORNEY EVERT N. FOWLE, MEMBER OF THE COMMISSION

SUMMARY

During the fall of 2003, I had the privilege of serving on this commission. While I am unable to endorse all of the recommendations made by this commission in their totality, for reasons to be explained below, I want to take this opportunity to thank my fellow commission members for the consideration and courtesy which they displayed toward me, in allowing my views to be brought forward and expressed. This was a hard-working and productive commission which proceeded in good faith at all times. There is much which this commission recommends which I can support, but there are also a number of important recommendations which I believe are ill-advised, counter-productive and wrong. What follows is my minority report to the members of the legislature who will consider the recommendations of this commission.

SUBCOMMITTEE ON IMMEDIATE ALTERNATIVES

IMMEDIATE ONE: This proposal was subsumed into a package of proposals concerning probation. This proposal called for the elimination of Probation for all Class D and E crimes except for Sex offenses , Domestic Violence, Repeat OUI offenders and other "unusual cases where serious risk to public safety exits as determined by the court."

RESPONSE: Courts, Prosecutors, Defense Attorneys need more alternatives to address issues raised by the thousands of cases processed each year, not fewer alternatives. While I would agree that alternatives to probation should be pursued and used in many cases where probation is used presently, (This writer was an enthusiastic backer of Administrative Release for low level, low risk offenders) an artificial limitation on whole categories of crimes where probation cannot be used is unwise and counter-productive.

In addition, there are currently a number of felony cases which are resolved at the misdemeanor level. If probation is not an option, or if it is unclear that probation will be an option, I can assure you there will be more felony convictions and fewer reductions to the misdemeanor level. While that may be a desirable result, this result should not be reached as a result of limiting the availability of probation.

IMMEDIATE ALTERNATIVES THREE: This proposal provides that Probation (except sex offenses) be reduced dramatically for all Felony Crimes. Less serious misdemeanor crimes are not affected by this change. The changes proposed are as follows:

Class of Crime	present max probation	proposed max probation
A	Six Years	Four Years
B	Four Years	Three Years
C	Four Years	Two Years

RESPONSE: I strongly dissent, and question the wisdom of such a recommendation. The answer for overburdened probation officer caseloads is not to artificially limit and reduce the maximum period of probation supervision. The maximum period of probation to be faced by an Arsonist, person who commits Elevated Aggravated Assault, Manslaughter, Armed Robbery would be four years under this recommendation. There are many very serious and violent crimes where the goal is to maximize the period of supervision for the offender. In some instances, because of strict probation requirements such as house arrest, Courts have been willing to sentence some offenders to somewhat reduced prison terms because of the lengthy period of supervision which will follow the offender upon his release. The result of this proposal may be that many offenders are sentenced to **longer terms of incarceration.** I can guarantee that a prosecutors and Judges will increase the prison terms of certain offenders in response to this artificial limitation on the probation terms for some of our most serious offenders.

As stated above, this writer did endorse the concept of Administrative Release, a non-probation form of supervision, which might require the offender to pay restitution or perform community service, or simply stay out of trouble. I suggested as an alternative, that those serious offenders, who have completely satisfied the terms of their probation and are not thought to present a risk to the public, be eligible for Administrative Release or for an early termination of their probation. Such a proposal provides for an individualized assessment of each individual offender and does not provide for a blanket reduction of probation terms for our most serious offenders.

The Department of Corrections and many of the members of the commission appeared to want the shortest path between two points; where we are today, and where we want to be, in terms of probation case loads. This pathway just knocks people off probation, and limits their length of time on probation, often without adequate consideration to the severity of the offense, or to how the offender has performed on probation. While the simplicity of such a plan is attractive to some, the possible unintended consequences are numerous. First, it may increase incarceration terms for some offenders. Second, some individuals will be off probation and commit serious and violent crimes and the recourse of society will be limited. A probation violator who violates probation is subject to a Court hearing where the burden of proof is by a preponderance of the evidence. There is no jury trial, nor is there the requirement that proof be established beyond a reasonable doubt. This reduced level of due process rights enjoyed by the offender is one of the consequences for being put on probation. Our system is allowed to address the problems posed by repeat violent offenders by dealing with them more expeditiously. This proposal limits our ability to respond to the continuing criminal behavior of our most serious and violent offenders. The simplest solution in this case is not the best solution. Instead, courts, prosecutors and others

working in the criminal justice system should have more options for dealing with criminal offenders and not fewer.
IMMEDIATE FOUR: This proposal encourages probation officers to "make maximum utilization of existing law for early termination of probation for those offenders who have met all goals and requirements and are deemed to be of low risk".

RESPONSE: This sounds very good at first reading. Please remember that the maximum period for all felony probations excepting sex offenses has already been drastically reduced by other proposals of this commission. Obviously, there are certain individuals who can be terminated from probation without endangering the public safety.
Recently in the Skowhegan District Court, the Department of Corrections moved to terminate the probation of an individual who had been convicted for OUI six times. This individual had served seven months of a twelve-month probation following his jail term. His blood alcohol level was .31, or nearly four times the legal limit. The Department of Corrections stated that he had completed counseling and thus could be released from probation. This individual was a career repeat drunk driver, whose blood alcohol levels were going up with each successive offense. The Court denied the motion. The probation department continues to characterize this offender as a low risk offender who had completed all of his requirements. **This individual is a time bomb, who is likely to ultimately kill someone driving drunk.** The high level case loads which burden our probation officers caused a suspension of good judgment in the above referenced case.

A better alternative would be to exercise great care before releasing someone from probation. The offender thought to be low risk should be placed on a non-reporting administrative supervision, or on Administrative Release, again which I endorse as an alternative to probation. The rush to terminate serious offenders from probation will lead to tragic consequences, which will undermine the work of this commission, and many of the worthy recommendations made.

IMMEDIATE 10: At the present time, all county jail inmates must serve one third of their sentence before being eligible for home release. This proposal would provide that "low risk" inmates would be eligible for home release the day of their sentencing. At the present time, this program is under-utilized in its present form.

RESPONSE: This proposal, if adopted is likely to breed further cynicism amongst a wide portion of the population that already feels that criminals are not dealt with in a serious manner. What further evidence would they need to label our system of justice as a "Catch and Release" system? This proposal undermines the other very promising recommendations of this commission, particularly those made by the Diversion Sub-Committee. I strongly suggest that increased use of the present framework be made, before expanding the already liberal release provisions. I also believe that if a Judge sentences an offender to sixty days in jail, it should be the same judge who declares him eligible for release on day two, not the sheriff or jail administrator.

THE PROPOSALS OF THE SENTENCING SUB-COMMITTEE

Maine has the lowest violent crime rate, the fifth lowest property crime rate, and is tied for dead last in the number of people incarcerated per capita. In short, nearly every state would very much desire to face the problems we are facing with respect to crime and jail overcrowding. While the Maine people deserve the bulk of the credit for Maine's enviable position, it should also be considered that perhaps law enforcement and prosecution, the Courts, and the other key stakeholders of the criminal justice system are doing a pretty good job with very limited resources. There is no doubt that we can do better and that some sentencing reforms, and aggressive exploration of diversion alternatives is called for. We should also proceed cautiously, and not jeopardize our current success, through the radical changes which some of the proposals of the sentencing sub-committee call for.

SENTENCING ONE: This proposal endorses the elimination of mandatory minimum sentencing in **"extraordinary circumstances"**. In considering whether extraordinary circumstances are present the Court is to consider a number of factors, including the nature of the criminal act, the defendant's prior record, the recommendation of the victim's family and state's attorney, and the defendant's prospects for rehabilitation, credible demonstration of remorse and his comprehension of the consequences of his actions.

RESPONSE: The application of mandatory minimum sentencing in this state is minimal compared with other States, and particularly the Federal Government. I am certainly not calling for any additional mandatory minimum penalties, but I do strongly urge this sub-committee and/or the legislature to consider this issue more carefully and to consider all of the possible consequences of this proposal.

Mandatory minimum sentencing currently encompasses second offense Gross Sexual Assault, Dissemination of Child Pornography, Aggravated (large quantities, near a school, to a minor etc.) Drug Trafficking of drugs such as heroin, cocaine and LSD, OUI, Operating after Suspension following an OUI, and Dogs chasing Deer. The current proposal does not specify which form of mandatory sentencing is to be done away with in the case of "extraordinary circumstances. My concerns are the following:

1. Many people are concerned with the significant disparities in sentencing and outcomes around the state. This is what led the push for the limited mandatory-minimum sentencing we have today. If you allow for departures from mandatory minimum sentencing, there is no doubt that sentencing disparities will increase as the various courts will have a different view of what constitutes extraordinary circumstances.

2. There should be no mistake, that the ultimate goal of the people in favor of this proposal is the total elimination of mandatory-minimum sentencing.

3. As stated above, there are a variety of crimes which are subject to mandatory-minimum sentencing. Mandatory minimum sentencing is not limited to jail time, it also provides for minimum fines. The crime of Operating under the Influence has a highly developed mandatory minimum sentencing structure depending on the blood alcohol test level and

the number of prior offenses. This structure, with periodic amendments, has been in effect for over twenty years. During this time, OUI has changed from being a civil violation/crime which people took lightly, to becoming a badge of dishonor and shame for those who are apprehended. In the last decade, the number of OUI arrests has fallen by approximately forty percent. The percentage of fatal accidents linked to alcohol has also plummeted. In short, our current enforcement efforts are working, both with respect to OUI and those who drive after being suspended for OUI. These repeat drunk-driving offenders are responsible for much of the carnage on our highway.

This proposal does away with mandatory minimum sentencing for these individuals. A person who is convicted of OUI four times in ten years now faces a mandatory six month jail term. A person who gets caught for driving drunk four times in a ten year period is a serious alcoholic with no social conscience. Our current penalty, if anything, is far too lenient. Eliminating mandatory minimum sentencing with regard to OUI and those who continue to drive after their OUI suspension, sends a signal that our resolve in this area is weakening and that we are retreating from the commitments we have made to victims of drunken driving and to the safety of the public. It is a serious mistake. It will increase disparity all over the board in the area of OUI sentencing, depending upon the Judge, the DA's office, and other factors which do not involve a consideration of public safety.

This highlights the problems of a blanket approach to this issue and the unintended consequences of this proposal. There may be specific crimes for which mandatory sentencing is either ill-advised, unnecessary, or not stringent enough. Each crime should be considered on its merits. A blanket approach leads to results which will likely undermine the entire good work of this commission.

SENTENCING FOUR: This proposal increases the felony threshold for theft and other crimes of dishonesty from $1,000.00 dollars to $3,000.00 dollars.

RESPONSE: With some reservations, I did support this amendment, after first strongly suggesting that the increase be to $2,000.00. I think that is a more reasonable level, and would have a greater chance of passage.

SENTENCING EIGHT, TEN-FOURTEEN: These proposals initially provided doubling the good time for good behavior for all crimes, and significantly increasing good time for people who take various expanded avenues to improve themselves while in jail or prison. I strongly objected and was initially joined by a plurality of the commission members in defeating the good behavior component of this proposal, with several abstentions. The proponent of this proposal then asked the abstainers if Gross Sexual Assault and Murder was exempted from the good time increase would they support this proposal. They indicated they would. So with those exceptions, the doubling of good time for good behavior was then approved by a wide margin. The other proposal to increase good time from 3 to 5 days a month for those who received training, education, or participated in work programs passed by a bare 6 to 5 vote.

RESPONSE: I object to increasing good time, and any return to the make-believe sentencing which existed before the truth-in-sentencing was established in 1995. The claim is made that any increase in good time will have to be earned by the inmate. While I certainly do not question the sincerity of those making that claim, we also know how the real world works. With fifteen county jails, most of which are overcrowded, and several more DOC facilities, one would expect twenty separate standards and methodologies governing the application of good time. This will undermine the respect the public has for the criminal justice system and increase public cynicism. The point is not so much how much time inmates are sentenced for, but that they serve the time we claim they are going to serve.

Second, I objected to the spur of the moment horse-trading which accompanied the passage of the good time proposal which doubled good time for good behavior. Perhaps this is the way that all serious commissions work, but I doubt it. There is an ideological component of this commission which is driven by the need to reduce the numbers of people incarcerated by any means necessary. It is respectfully submitted, that great care is needed in this area and that great care was not shown, both in the formulation of this proposal, and particularly in the manner it was ultimately adopted. I repeat, that there is much merit to many of the proposals of this commission, which I enthusiastically support. I sincerely believe that they are jeopardized by the ideological zeal which is reflected in many of the sentencing subcommittee's proposals.

I strongly supported proposals 10-13, which expanded the types of activities which would qualify an inmate for good time, as they are constructive and positive activities which inmates should be encouraged to undertake. I simply did not support the increase in good time itself.

SENTENCING NINE: This proposal calls for the application of good time to those in jail awaiting trial. Because of the problems inherent in this proposal, it was suggested instead, that more options be explored in the nature of treatment or alternative programs which would be of benefit to the inmate awaiting trial. I do support this approach and I do not support the original proposal. The inmate awaiting trial already has an incentive to behave. He can be moved to a more restrictive facility, and bad behavior will be brought to the sentencing court's attention should a conviction result. The original proposal is simply an approach to lower the number of people in jail, without any consideration given to public safety, prior criminal record, the nature and seriousness of the charge, or any other component of our bail or sentencing codes.

SUBCOMMITTEE ON DIVERSION AND COMMUNITY ALTERNATIVES

I was a member of this sub-committee and an enthusiastic participant in its deliberations. I strongly support the vast majority of this sub-committee's recommendations. I have been somewhat sanguine about risk-assessment for every defendant before he is sentenced, or even sentenced to a term of incarceration. My office alone processes thousands of criminal cases each year and such risk-assessment is simply

not feasible for such a large number. Never-the-less, we need to increase the use of risk-assessment in the sentencing process.

We also need to increase alternative programs for low level and first offenders. We need to develop programs and strategies to steer these offenders away from the criminal justice system. If the ultimate goal is to reduce the numbers of people incarcerated and the cost associated with incarceration, this is the area where these goals will be achieved. Additionally, intervention strategies for troubled families need to be conceived and implemented. The best means of reducing the number of future offenders provides that they be reached while they are still in grammar school. A full range of multi-disciplinary approaches needs to be developed, considered and implemented. State Prosecutors already take the lead with respect to diversion programs for deserving offenders. We need to do more both with respect to pre-sentencing programs and also pre-adjudication programs. For those offenders whose initial criminal conduct appears to be unlikely to be repeated, the prospect of a dismissal or expungement should be offered as further incentive for embarking on and staying on the right course.

This state also needs to do far more for the mentally ill. We all need to work together to minimize the correctional experiences of the mentally ill. At the present time, jail officials and prosecutors already seek to do this, but we often have no alternative. **When the hard choice has to be made between incarcerating someone with mental illness or compromising the safety of the public, an incarceration decision is and should be made. WE NEED TO DEVELOP ALTERNATIVES SO AS TO MINIMIZE AND TO WORK TOWARD THE ELIMINATION OF THESE HARD CHOICES.** The incarceration of someone with a true mental illness is one of the most difficult decisions made by any Court or prosecutor. Our sub-committee has developed some very sound proposals to address this issue. In the short term, significant expenditures of resources will be needed to develop these diversionary alternatives to incarceration. In the long term, we will likely find that this was a very prudent investment of our limited resources.

CONCLUSION

Diversion and alternative programs offer this state the most promise for the future. Care and Treatment for the mentally ill, alternatives for first time offenders and low risk offenders will likely assist in the prevention of these individuals becoming higher risk and repeat offenders. These programs should be pursued aggressively but at the same time with caution. I am an Aggressive Moderate in this area. In developing sentencing alternatives, and in some cases prosecution alternatives, we need to proceed with care. People's lives are at stake. If the wrong person is released early, an innocent person may be killed, or maimed. We can never completely eliminate this risk, nor should this risk prevent us from doing the right thing for the citizens of this state. But we can take concrete steps to minimize the risk to the public as we embark on a path to improve our system of sentencing and of criminal justice. A responsible path will minimize the blanket one-size-fits-all approaches. A responsible path will increase the number of choices and options available to the criminal justice system and not minimize them. **A responsible path will not seek the reduction of inmates in our system as an**

end in itself, but rather as a positive by-product of the other improvements we have made to our system of criminal justice. Toward this end, a responsible path toward a better system and a lower crime rate, seeks to identify low-risk and first time offenders and steer them away from the criminal justice system. It does not reward all inmates with increased good time, irrespective of what they have done, or what their criminal histories are. A responsible path toward a better system does not eliminate probation for most minor crimes irrespective of the individual and his history, it instead looks at the progress this individual has made and perhaps steers him toward a less formal program of administrative release.

The proposals which drastically reduce the length of probation for virtually all felony crimes will either provide for a shorter period of supervision for serious criminal offenders or more incarceration on the front side. For those serious offenders who make great progress, other alternatives such as administrative release could be employed to reward these offenders for their progress and free up the probation officer to concentrate on others who are not making progress. An artificial reduction in the length of probation for our felony offenders is counter-intuitive, and in the end counter-productive. The approach I call for is more cautious, longer term, and initially, more expensive. Ironically, I sincerely believe that the ultimate goals of this commission are better served in the long term by the approach I propose, an approach which individualizes our focus on deserving offenders at the earliest possible stage of his involvement in our criminal justice system, and which minimizes approaches which benefits everyone, notwithstanding their criminal histories and what they may have done to wind up in prison.

Finally, as strongly as I disagree with some of this commission's proposals, I want to state that there is much which is positive about the work of this commission, particularly in the area of Diversions and alternative programming, for first time, low risk and mentally ill offenders. Our system needs an injection of risk assessment into the sentencing process as well. This commission conducted itself with courtesy and civility with all points of view being heard. I particularly thank Commissioner Allen for his fair and even manner, and would also note that Senator Strimling, (whom I often disagreed with) took steps to make sure that my schedule was accommodated and that my critical views with regard to the sentencing sub-committee's proposals could be heard. For that, I thank him, and would note that this is typical of the respect accorded to each member of the commission. This has been a very constructive and rewarding experience for all of us, and I hope that much good will come from our efforts.

Respectfully Submitted,

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January 5, 2004

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