

THE JUSTICE REINVESTMENT INITIATIVE AND SB500 PROVISIONS

A Guide for Individuals Under NHDOC Probation and Parole Supervision and Incarcerated in NHDOC Facilities

The purpose of this document is to clarify the Justice Reinvestment Initiative provisions in SB500 for probationers, parolees and inmates. With new regulations there is often confusion about what will change, when it will change and to whom it applies. This document will answer many of your questions.

The new law is based on research and policies that have proven effective in reducing recidivism and thus the number of people in prison in other states. Senate Bill 500 works to turn these policies into New Hampshire law. You can read about these policies in a paper released by the Justice Center of the Council of State Governments in January 2010, "Justice Reinvestment in New Hampshire." As the NH Department of Corrections works to meet the requirements of the law, you will be given additional information on any ongoing changes to rules or procedures that may affect you.

The brochure is divided into three sections making it easier to find the provisions that apply to you. These sections are;

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What Probationers Should Know

SB500 draws upon research and evidence of what has worked to reduce recidivism in other states, namely to focus most of the Department's attention and resources on its highest risk offenders. The bill requires the use of a valid assessment tool to help determine the level of supervision to which you will be assigned. The level of supervision can range from low or moderate to maximum or intensive (ISP) and is based largely on whether you are of low, medium or high risk to re-offend as measured by the risk assessment tool.

SB500 Text:

- I. Every person placed on probation or parole shall be assessed by the Department of Corrections, using a valid and objective risk assessment tool, to determine that person's risk of recidivating. Based on that assessment, the person shall be designated as low, medium, or high risk.*

- 1. One provision of SB500 sets criteria for moving probationers from active supervision to administrative supervision based on your behavior. Being placed on administrative supervision means your reporting requirements are significantly reduced in recognition of your good conduct.**

SB500 Text:

- II. Any person placed on probation for a misdemeanor shall be subject to active supervision for up to the first 9 months and thereafter be placed on administrative supervision unless the probationer has been designated high risk or has been adjudicated by the court for a violation of the conditions of probation during the first 9 months under supervision.*
- III. Any person placed on probation for a felony shall be subject to active supervision for up to the first 12 months and thereafter be placed on administrative supervision unless the probationer has been designated high risk or has been adjudicated by the court for a violation of the conditions of probation during the first 12 months under supervision.*

Questions and Answers:

- *Who will this apply to and when will it take effect?*

This only applies if you were placed on probation on or after 7/1/2010 and if the results of the risk assessment have placed you on low or moderate supervision. If both these things are true, your reporting requirements may be significantly reduced, after the required 9 or 12 month timeframe. However, if you have been revoked or your risk assessment has changed to "high" you will be assigned to maximum supervision.

- *Can my reporting and probation requirements change?*

Your PPO can decide at any time to reduce your supervision level based on your behavior and risk scores. If you are assigned to low or moderate supervision levels, your behavior and motivation will be reviewed at 9 months for misdemeanor probation and 12 months for felony probation. This review can result in assignment to administrative supervision or can result in a raised risk level and higher level supervision if your conduct and circumstances warrant. The outcome is largely in your hands.

- *What if I am assigned to maximum or intensive supervision?*

The timeframes listed in SB500 do not apply to you until your PPO lowers your supervision to low or moderate levels.

SB500 builds upon research showing that short and certain sanctions for misconduct, when enforced swiftly and with certainty, can be effective in gaining the desired behavior from offenders under supervision.

2. If you are serving felony probation, the next provision of SB500 allows your PPO to immediately enforce up to 5 days of incarceration in a county jail if s/he determines that your behavior is a problem or you have failed to meet the terms of your probation.

SB500 Text:

III. A probation or parole officer may require any probationer, whose sentence includes a one to 5 day jail sanction pursuant to RSA 651:2, V (i), to serve a county house of corrections sanction or a portion thereof, provided that the probationer is advised of and waives his or her right to counsel and to a preliminary hearing under RSA 504-A:5 and violations of probation hearing.

RSA 651:2, V, (i) The court may include, as a condition of probation for a felony offense, a jail sentence of one to five days that a probation/parole officer may impose in response to a violation of a condition of probation, in lieu of a violation of probation hearing. Such jail sanction shall be served at the county jail facility closest to or in reasonable proximity to where the probationer is under supervision.

Questions and Answers:

- *Who will this apply to and when will it take effect?*

This only applies to if you were placed on felony probation on or after 7/1/2010 and the sentence imposed by the court includes this provision in the sentencing language.

- *How does this sanction work?*

Your PPO can impose up to a total of five days of incarceration in the county jail and order you to report to the jail on a specific date and time to begin serving that sanction as long as you agree to waive your rights to counsel, a preliminary hearing and a violation of probation hearing. Your PPO can use this authority more than once but cannot enforce more than a total of five days sanction.

- *What happens if I do not waive my rights to counsel, a preliminary hearing and a violation of probation hearing?*

In this case, your PPO may file a violation of probation petition with the court and await a decision by the judge as to how to proceed.

What Parolees Should Know

SB500 draws upon research and evidence of what has worked to reduce recidivism in other states, namely to focus most of the Department's attention and resources on its highest risk offenders. The bill requires the use of a valid assessment tool to help determine the level of supervision to which you will be assigned. The level of supervision can range from low or moderate to maximum or intensive (ISP) and is based largely on whether you are of low, medium or high risk to re-offend as measured by the risk assessment tool.

- 1. This provision sets criteria for moving a parolee from active supervision to administrative supervision based on your behavior. Being placed on administrative supervision means your reporting requirements are significantly reduced in recognition of your good conduct.**

SB500 Text:

- IV. Any person placed on parole for a felony shall be subject to active supervision for up to the first 18 months and thereafter be placed on administrative supervision unless the parolee has been designated high risk or has violated the conditions of parole during the first 18 months under supervision.*

Questions and Answers:

- *Who will this apply to and when will it take effect?*

This only applies if you were placed on parole on or after 7/1/2010, if the results of the screening process have placed you on low or moderate supervision and you were not found to have violated the conditions of your parole. If all of these things are true, your reporting requirements may be significantly reduced after the 18 month timeframe. However, if you have been revoked or your risk assessment has changed to "high" you will be assigned to maximum supervision.

- *Can my reporting and parole requirements change?*

Your PPO can decide at any time to reduce your supervision level based on your behavior and risk scores. Your behavior and motivation will be reviewed at specific timeframe that the law requires. If you are under low or moderate supervision levels you must be reviewed for placement on administrative supervision based on your behavior and compliance with your conditions of parole.

- *What if I am assigned to maximum or intensive supervision?*

If you are at high risk to re-offend, your PPO will assign you to maximum supervision and will explain your reporting requirements to you. Also the Parole Board may order Intensive Supervision (ISP) based on the specifics of your case. ISP involves even more stringent reporting requirements. The timeframe listed in SB500 does not apply to you until your PPO lowers your supervision to low or moderate levels.

SB500 builds upon research showing that short and certain sanctions for misconduct, when enforced swiftly and with certainty, can be effective in gaining the desired behavior from offenders under supervision.

- 2. This provision allows your PPO to immediately enforce a 7 day sanction in a DOC Transitional Housing Unit (halfway house) when your PPO determines that your behavior is a problem or you have failed to meet the terms of your parole. This sanction is in lieu of revocation and thus is seen as the last step before being returned to prison.**

SB500 Text:

651-A:16-a Intermediate Sanction Programs.

- The commissioner shall establish one or more intermediate sanction programs, to include a 7-day residential program located in a halfway house facility.*
- Probation/parole officers may place a parolee in an intermediate sanction program in lieu of a parole revocation hearing only if the offender agrees to participate.*

Questions and Answers:

- *Who will this apply to and when will it take effect?*

This only applies to if you were placed on parole on or after 10/1/2010.

- *How does this sanction work?*

Your PPO can impose a seven day term in one of the Department of Corrections Transitional Housing Units and order you to report there on a specific date and time to begin serving that sanction. No court order or action by the Parole Board is required. You will be required to waive your rights to counsel and a preliminary hearing in order to be placed in this sanction.

- *Can I be given this sanction more than once?*

Your PPO can use this authority as often as he/she believes it may have the desired effect on your behavior. The next level of sanction is seeking a revocation of your parole and return to prison.

- *What if I have medical issues?*

It is important to note that while you are ordered to report to and stay at the Transitional Housing Unit for those seven days, you are still on parole. You are still financially responsible for any medical costs incurred during your stay. You will need to bring any legally prescribed medications with you. If you have medical issues that you need to take care of or have already scheduled appointments, then you should work with you PPO to schedule your sanction around those appointments.

- *What if I behave badly while at the Transitional Housing Unit?*

Part of the agreement you will sign upon arriving at the Transitional Housing Unit acknowledges that if your behavior presents a significant safety or security risk, the staff of that facility have the authority to have you returned to state prison to await parole revocation proceedings.

SB500 seeks to build upon research which demonstrates that longer terms of incarceration for violations of parole do not necessarily yield better results (lower recidivism) once parolees return to the community.

3. Another provision of SB500 limits terms of incarceration for violations of parole to 90 days.

SB500 Text:

651-A:19 Effect of Recommittal

- I. A prisoner who is recommitted (**violated**) shall serve 90 days in prison before being placed back on parole or the remainder of his or her maximum sentence, whichever is shorter. The time between the return of the parolee to prison after arrest and revocation of parole shall be considered as time served as a portion of the maximum sentence.*
- II. Prisoners who are recommitted shall be housed separately in a prison housing unit that provides focused, evidence-based programming aimed at reengaging parolees in their parole plan.*

Questions and Answers:

- *Who will this apply to and when will it take effect?*

This only applies to you if you were under active parole supervision on 10/1/2010 or placed on parole after 10/1/2010.

- *What happens if my Parole Officer seeks to revoke my parole?*

If you are arrested on a parole violation warrant you will be taken to one of the Department's intake facilities at NH State Prison for Men and NH State Prison for Women. Once your intake processing is complete and you are medically cleared you will be moved to the designated housing area for parole violators where programming is available.

- *When does my 90 Day Parole Violator Sanction start?*

The Parole Board has up to 45 days to hold the Parole Revocation Hearing. Your 90-day timeframe does not begin until the Parole Board officially revokes your parole and formally rules on your recommitment to state prison. If you are moved to the PV housing unit while you are awaiting your Parole Revocation Hearing, you will be expected to be of good behavior and participate in focused programming soon after arrival, whether you have a formal ruling on your revocation or not.

- *What if I know that I violated conditions of my parole and don't dispute it?*

The Parole Board may offer you the opportunity to waive both your Preliminary Hearing and your Parole Revocation Hearing. This will mean that you do not choose to challenge the facts of the violation and upon signing the waiver the Parole Board will formally revoke your parole status and your 90 day sanction will begin immediately.

- *What is the advantage of waiving my rights to hearings?*

If you choose to waive the hearings you do not have a waiting period. You only serve 90 days from the date of the waiver.

- *What if I choose to dispute the violation and want a hearing before the Parole Board?*

You are free to do so and if the Parole Board revokes your parole at that hearing you may be required to serve the full 90 days from that point, even if you have waited a month or more for that hearing.

- *Doesn't the time I serve while waiting for a hearing count for anything?*

The Parole Board has the authority to grant you credit for any or all of the time you waited for your hearing, but will only consider doing so if you participate in the programming offered and have behaved well during the time you were awaiting your hearing.

- *What is the 90-Day Parole Violator Sanction?*

The purpose of the 90-Day PV Program is to assist you in recommitting to your parole plan, address issues that proved to be problems for you while on parole and get ready for your release back on parole at the end of the 90-Day sanction. When appropriate, you may participate in programs with other inmates who are also addressing similar issues, but will be housed separately from the general population.

If you are on parole for a sexual offense, staff from Sex Offender Treatment services will determine if the facts of your revocation warrant reengagement in sex offender treatment. If so you will be housed in the SOT Unit. If not, you will be placed in the Parole Violator unit.

You will be expected to behave positively and appropriately during your time in the PV sanction. If you behave well and engage in your programs positively, program staff will recommend lower levels of active supervision on parole. All programs and services are designed to help you identify and address the issues that resulted in a return to prison. Staff will work with you to make sure you have appropriate follow-up services to help you continue to succeed once you are released.

If you misbehave or create serious safety risks you can lose privileges, be removed from the program for specific periods of time or transferred to the Special Housing Unit at NH State Prison for Men or C-Tier at NH State Prison for Women. If that is the case, once you are released, the level of supervision will be significantly more demanding. Parole conditions may include additional program requirements. Once you leave the prison, some of the required programs could be costly. So completing them successfully while incarcerated is in your personal and financial interests.

- *What if I have pending charges?*

If you have been arrested and charged with a new offense, your Parole Officer will report this to the Parole Board along with a recommendation whether to revoke your parole or not. This recommendation is made based upon your overall performance on parole as well as the nature of the new charges.

If the Parole Board decides to issue a warrant for your arrest for violation of parole, your Parole Officer will file the arrest warrant with the county jail as a "hold order". You will remain in the county jail until you have your trial on the new charge(s) or until you post bail. If you are to be released from the jail at any time (on bail or after trial) your Parole Officer will be notified. Your Parole Officer will then take you into custody and bring you to state prison to begin the 90-Day Parole Violator sanction.

- *Is the 90-Day Parole Violator Sanction a “one shot” thing?*

No. The Parole Board can revoke your parole for violations of the conditions of your parole as often as your conduct dictates.

What Inmates Should Know

SB500 seeks to reinforce truth-in-sentencing by requiring nonviolent, property, and drug offenders to serve 100 but no more than 120 percent of their minimum sentence while at the same time focusing the majority of the Department's resources on violent and higher risk offenders.

- 1. This provision requires that non-violent offenders be released to parole no later than 120% of the eligible inmate's minimum sentence.**

SB500 Text:

(b) A prisoner convicted of a nonviolent offense shall be released on parole upon 120 percent of the minimum term of his or her sentence, minus any credits received pursuant to RSA 651-A:23, plus the disciplinary period added to such minimum under RSA 651:2, II-e, any part of which is not reduced for good conduct as provided in RSA 651-A:22.

Questions and Answers:

- *Who will this apply to and when will it take effect?*

This provision applies to you only if you were sentenced on or after 7/1/2010 and if your crime meets the definition of "non-violent" listed below. Inmates sentenced to state prison prior to 7/1/2010 and those sentenced at any time for any of the violent crimes listed are not eligible for this provision.

- *Can I be granted parole prior to the 120% of minimum sentence?*

Yes. The Parole Board still retains the authority to grant you parole at any time between your minimum sentence and 120% of your minimum based on your behavior and participation in required programs.

- *Will I still need to appear before the Parole Board and present a parole plan?*

Yes. While this provision requires that you be released under parole supervision at 120% of your minimum, the Parole Board retains the authority to place any restrictions and conditions on your release that it deems appropriate to your case. If there are victims of your crime they still have the right to provide input to the Parole Board.

- *What happens if I have multiple sentences?*

Each sentence is dealt with individually. So, if your 120% of minimum comes up while you still have a longer concurrent sentence or a consecutive sentence, you will be paroled to that other sentence as long as you meet all the other criteria described earlier.

- *What defines a violent versus non-violent crime under SB500?*

The following crimes are considered violent crimes under SB500:

- Capital murder, first or second degree murder, manslaughter, or class a felony negligent homicide under RSA 630;
- First degree assault under RSA 631:1;
- Aggravated felonious sexual assault or felonious sexual assault under RSA 632-A;
- Kidnapping or criminal restraint under RSA 633;
- Class A felony arson under RSA 634:1;
- Robbery under RSA 636;
- Incest under RSA 639:2, III or endangering the welfare of a child by solicitation under RSA 639:3, III;
- Any felonious child pornography offense under RSA 649-A;
- Violation of protective order under RSA 173-B:9;
- Second degree assault under RSA 631:2;
- Felony reckless conduct under RSA 631:3;
- Criminal threatening involving the use of a deadly weapon under RSA 631:4;
- Stalking under RSA 633:3-a;
- Burglary under RSA 635:1;
- Tampering with witnesses and informants under RSA 641:5; or
- Felonious use of firearms under RSA 650-A:1,

SB500 seeks to improve public safety by ensuring everyone leaving prison receives at least nine months of post-release, community-based supervision.

2. This provision requires that every eligible inmate who is not serving life without parole leaves prison under at least nine months of parole supervision.

SB500 Text:

*(c) All prisoners who have not been previously paroled, or who were recommitted to prison more than one year prior to the expiration of the maximum term of his or her sentence, shall be released on parole at least 9 months prior to expiration of the maximum term of his or her sentence. This provision shall not apply to any prisoner who is the subject of a pending petition for civil commitment pursuant to RSA 135-E (**Sexually Violent Predator law**). In the event that the prisoner is not civilly committed, he or she shall be released on parole for the remainder of his or her sentence.*

Questions and Answers:

- *Who will this apply to and when will it take effect?*

Beginning October 1, 2010, if you have;

- never been paroled on your current sentence, and
- you have at least 9 months until your “max-out date, you are eligible for this provision.

OR

Beginning October 1, 2010, if you are;

- back in prison for a violation of parole,
- your revocation of parole was at least one full year prior to your “max-out” date, and
- you also have at least 9 months or more to go before your “max-out” date you are eligible for this provision.

- *Does this provision mean that I cannot be paroled until 9 months before my “max-out” date?*

No. As long as you are not serving life without parole the Parole Board still retains the authority to grant you parole at any time after you serve your minimum sentence, based on your behavior and participation in required programs.

- *Will I still need to appear before the Parole Board and present a parole plan?*

Yes. While this provision requires that you be released under parole supervision, the Parole Board retains the authority to place any restrictions and conditions on your release that it deems appropriate to your case. If there are victims of your crime, they still have the right to provide input to the Parole Board.

- *Can my parole be revoked during these 9 months under mandatory supervision?*

Yes. If you do not abide by the conditions of parole placed upon you by the Parole Board, including committing new offenses, the Board retains the authority to issue a warrant for your arrest for violation of parole.

- *What if I am serving a sentence for a sexual crime or high risk violent crime?*

In this case the Department will recommend to the Parole Board that you be placed in the Intensive Supervision Program (ISP) where additional reporting and supervision requirements will be imposed. You should become familiar with PPD 5.05 if you believe this situation applies to you.

- *What if I am serving a sentence for a sexual crime that qualifies for review as a Sexually Violent Predator?*

In this case you will not be eligible for this provision unless the county attorney or attorney general decide not to file a petition under RSA 135-E:4,I or the multidisciplinary team determines that you are not a sexually violent predator as defined by law. DOC will notify the appropriate authority prior to your “max-out” date to allow for a review of your case.

3. Finally, SB500 seeks to build upon the use of disciplinary days as a punitive response for misconduct by prisoners by introducing the ability to use the disciplinary days credit to reinforce positive behavior.

SB500 Text:

- II. The commissioner shall by rule determine the standards for the earning of credit for good conduct. Such rules shall not be subject to the provisions of RSA 541-A (**the Administrative Procedures Act on rulemaking**). Such rules shall establish standards for prisoners to receive credit for participating in programs designed to reduce recidivism of participants, as determined by the commissioner.*

Questions and Answers:

- *Are there any changes to the policy governing the granting and taking of disciplinary credits planned and if so when will they take effect?*

There is no specific timeline for this provision in SB500. The Department will take up this issue once all the other provisions are in place and working.

We hope this document has proven helpful and answered most of your questions. If things are still unclear to you about your specific circumstances, please contact your Correctional Counselor Case Manager or Probation Parole Officer. If they are unable to answer your questions directly, they will forward it to those in the Department who can.