

THE JUSTICE REINVESTMENT INITIATIVE AND SB500 PROVISIONS

Much has been said and written about the Justice Reinvestment Initiative and the provisions for its implementation in SB500. The legislation in itself can be confusing with regard to who the provisions apply to and when they take effect. This document is an attempt to address some of that confusion. The information included here follows the policy options set forth in the "Justice Reinvestment in New Hampshire" paper released in January 2010 and connects them to all the actual language enacted in SB500. The broad policy options appear in blue followed by the various elements found in SB500 related to that policy, text related to what offenders each provision is applicable to and the effective date for each provision. There is also some commentary added to further explain the implementation of each provision.

This is meant to be a "living" document. This means that your questions, comments and suggestions are welcome and will help to improve the quality and comprehensiveness of the explanations included in it.

The cowboy poet and humorist Will Rogers once said "Even if you're on the right track, you'll get run over if you just sit there." So we ask you to climb on board and help keep things moving steadily down the "right track."

A. Focus community-based supervision resources on high-risk offenders.

Provision #1: Active to Administrative Supervision (Probationers and Parolees)

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.
- 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 probationer has been designated high risk or has been adjudicated by the court for a violation of the conditions of parole during the first 18 months under supervision.

Applicability and Timeline:

(This provision) RSA 504-A:15 as inserted by section 4 of this act shall apply to any person placed on probation or parole supervision on or after the effective date of this act (7/1/2010).

Commentary:

The goal here is to direct our supervision to the newest and higher risk offenders. This approach seeks to adjust the workload of our Probation/Parole Officers away from cases in the "shallow end of the pool" and focus their effort on the "deep end". Research supports this approach. It has been found that focusing too many resources on supervision for lower risk offenders actually increases recidivism in this group. It is DOC's intent to consider expanding this approach to others under supervision (those who were under supervision prior to 7/1/2010) once the policies and operational issues are in place and solidified.

B. Use short, swift and certain sanctions, including jail time, to reduce crime and revocation rates among people sentenced to felony probation.

Provision #2: 5-day Jail Sanction (Probationers)

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.

Applicability and Timeline:

This provision takes effect on 7/1/2010 but only affects offenders placed on probation on or after that date and the sentence includes this provision in the sentencing language.

Commentary:

There are certainly implications for Field Services policy (establishing a clear matrix of sanctions and criteria for the use of this provision) and for CORIS (tracking probationers who have this sentencing language, tracking what probationers have been sent to a county jail under this provision and how many days of the five have been used).

Superintendents of the County Houses of Corrections have expressed concerns that this will increase their costs. We contend it will actually lower their costs. An offender arrested and sent to a jail pending a probation revocation hearing typically spends up to 30 days awaiting that hearing. This would shorten the time spent in jail while research in other states shows equal or better results in changing behavior.

C. Establish an intermediate sanction program and a designated parole revocation facility to respond more effectively to parole violations.

Provision #3: 7 Day Halfway House Sanction (Parolees)

SB500 Text:

651-A:16-a Intermediate Sanction Programs.

- I. The commissioner shall establish one or more intermediate sanction programs, to include a 7-day residential program located in a halfway house facility.
- II. 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.

Applicability and Timeline:

(This provision) RSA 651-A:16-a as inserted by section 8 of this act...shall apply to any person who is on parole as of October 1, 2010 or thereafter.

Commentary:

The goal here is to provide PPOs with the ability to apply "swift and certain" sanctions rather than have the process drag on for significant periods of time. Research shows that the immediacy and certainty of a sanction are more important to behavior change than the severity of the sanction.

Provision #4: 90-day Parole Violator Program

SB500 Text:

651-A:19 Effect of Recommitment

- 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.

Applicability and Timeline:

(This provision) RSA 651-A:19 as inserted by section 10 of this act shall apply to any person who is on parole as of October 1, 2010 or thereafter.

Commentary:

This program will be located at the Northern Correctional Facility. What the evidence-based programming will consist of and what staff will be responsible for delivery of that programming are questions still being discussed in several venues.

The research behind this provision shows that there is no discernable difference between a 3-month revocation period and longer revocation periods with regard to public safety and recidivism reduction. The question is asked "if 3 months gets the same result as 6 or 9 months, why spend the additional money; housing, paying, feeding, and providing medical services?"

D. Ensure that high-risk probationers and parolees with serious addiction and/or mental health disorders are monitored with rapid drug tests and have access to treatment programs.

Provision #5: Reinvestment of Savings in Community-Based Services

SB500 Text:

Intent. The General court intends that this act will:

- V. Reinvest a portion of corrections savings generated through these measures in the expansion of effective addiction and mental health treatment programs to ensure that



probationers and parolees can have access to treatment that can reduce their likelihood to reoffend.

Applicability and Timeline:

This provision will be played out during the next budget cycles.

Commentary:

While this is the expressed intent in the legislation, future legislators are not bound to reinvest any of the projected savings. It will depend upon the documented results of existing community efforts (Second Chance Act Demonstration Project and ARRA funded services) to convince the general court to target these funds in this manner.

E. Ensure everyone leaving prison receives at least nine months of post-release, community-based supervision.

Provision #6: Mandatory Parole Nine-Months to Max Out

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.

Applicability and Timeline:

(This provision) RSA 651-A:6, I(c) as inserted by section 6 of this act shall apply to any person incarcerated in the state prison with 9 months or more remaining until the expiration of his or her maximum sentence as of October 1, 2010 or thereafter.

Commentary:

Inmates who meet the following criteria are subject to this provision: Either;

- o **An inmate who has never been paroled and has 9 months or more left to max out on or after 10/1/2010,**

Or

- An inmate who has been recommitted (violated) at least one year prior to his or max out date, and who has 9 months or more left to max out on or after 10/1/2010.

NOTE: Inmates who qualify for review under the Sexually Violent Predator statutes 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 the offender is not a sexually violent predator.

F. Reinforce truth-in-sentencing by requiring nonviolent, property, and drug offenders to serve 100 to 120 percent of their minimum sentence.

Provision #7: 100 to 120% Mandatory Parole

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 REA 651-A:22.

Applicability and Timeline:

(This provision) RSA 651-A:6, I (b) as inserted by section 6 of this act shall apply to any person sentenced to the state prison on or after the effective date of this act.

Commentary:

This means that only inmates sentenced as of 7/1/2010 will be subject to this provision. Inmates already in the system will be subject to release on parole in the same manner as is currently in place.

To understand the actual calculation, consider the following scenarios:

- An inmate is sentenced on 10/1/2010 for 2 – 4 years (no pre-trial credits)
- His/her minimum is 9/30/2012 and the max out is 9/30/2014
- He/she has 300 disciplinary days added to the minimum (150 days per year) making the parole date 7/28/2011
- Scenario #1: - He/she earns back all 300 of the disciplinary days
- He/she is eligible for parole on the minimum; 9/30/2012
- The parole board can choose to parole the inmate on that date or not under their authority

- The parole board must parole the inmate at 120% of the minimum (add up to 146 additional days thus the required parole date would be 2/23/2013)

- o Scenario #2: - He/she earns back 200 of the 300 disciplinary days due to disciplinary actions or failure to engage in recommended programming.
 - He/she is eligible for parole on 9/30/2012 plus 100 days; or 1/8/2013
 - The parole board can choose to parole the inmate on that date or not under their authority
 - The parole board must parole the inmate at 120% of the minimum plus disciplinary days not earned (add up to 166 additional days thus the required parole date would be 6/23/2013)

In all cases, the parole board shall place whatever conditions of parole on the inmate it deems appropriate, whether paroling the individual on the earliest parole eligibility date or at the 120% mandatory date. Victims of crimes will still retain the right to appear before the board. The 120% statute does not apply to inmates convicted of violent crimes. They will be dealt with in the same manner as they have been in the past.

Frequently Asked Question: What defines a non-violent offense with regard to eligibility for the mandatory parole at 100 to 120% of the minimum sentence?

SB500 Text:

IV. "Nonviolent offense" shall include all criminal offenses, except those defined as violent crimes in RSA 651:5, XIII and the following:

- (a) RSA 173-B:9, violation of protective order.
- (b) RSA 631:2, second degree assault.
- (c) RSA 631:3, felony reckless conduct.
- (d) RSA 631:4, criminal threatening involving the use of a deadly weapon.
- (e) RSA 633:3-a, stalking.
- (f) RSA 635:1, burglary.
- (g) RSA 641:5, tampering with witnesses and informants.
- (h) RSA 650-A:1, felonious use of firearms.

RSA 651:5, XIII includes the following:

XIII. As used in this section, "violent crime" means:

- (a) Capital murder, first or second degree murder, manslaughter, or class A felony negligent homicide under RSA 630;
- (b) First degree assault under RSA 631:1;

- (c) Aggravated felonious sexual assault or felonious sexual assault under RSA 632-A;
- (d) Kidnapping or criminal restraint under RSA 633;
- (e) Class A felony arson under RSA 634:1;
- (f) Robbery under RSA 636;
- (g) Incest under RSA 639:2, III or endangering the welfare of a child by solicitation under RSA 639:3, III; or
- (h) Any felonious child pornography offense under RSA 649-A.

Commentary:

The question has been asked if “attempt” and/or “conspiracy to commit” any of the offenses outlined above fall into the same violent crime category as those who have actually been convicted of committing the offense. We will seek an answer to this.

This provision only considers the current controlling crime, not past criminal history.

Provision #8: Disciplinary Days Credit

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.

Applicability and Timeline:

There is no specific timeline for this provision. It makes sense that this be tackled after the details of the other provisions are solidly in place.

Commentary:

This provision is effective 7/1/2010 and attempts to re-think how the department approaches the earning of disciplinary days that have been added to a prisoner's minimum sentence. Currently the process is that all disciplinary days are assumed to be earned unless the prisoner loses disciplinary days due to a disciplinary proceeding. This provision invites us to think about how can we use disciplinary days to “incentivize” positive program involvement as well as appropriate behavior.

Focus groups have thus far concluded that loss of disciplinary days could be expanded to include failure to participate in required programming when made

available to the offender. Thoughts related to rewards for desirable conduct and participation in programs and activities are still on-going.