

**Testimony for the House Judiciary Committee  
HB 919 – Criminal Law –  
Swift and Certain Sanctions Pilot Program**

**March 10, 2011**

**SUPPORT**

The ACLU of Maryland urges a favorable report on HB 919, which would require the Division of Parole and Probation to implement a pilot program involving a system of graduated sanctions for violations of conditions of community supervision. HB 919 is a bipartisan bill introduced by Senators Shank and Gladden in the Senate and an identical bill introduced by Delegate Hough in the House. It is also supported by advocacy groups across the spectrum, including the Justice Policy Institute, Sentencing Project, American Legislative Exchange Council, Heartland Group, and ACLU of Maryland.

These legislators and advocates join the growing chorus around the country recognizing the need for systematic overhaul of our criminal justice systems and solutions to our bloated prison systems. HB 919 is a strong step in the right direction to address the serious problem of over-incarceration in Maryland that costs taxpayers over \$1.1 billion per year to maintain. The bill would allow the state to cut prison costs and reduce the prison population without endangering the safety of our communities.

**Maintain Public Safety**

Approximately one-third of people admitted to prison are there for technical parole and probation violations, including missed appointments with parole officers or failing drug tests. In Maryland, that number is higher than the national average – we incarcerate more people for lesser violations. These are not individuals who are a danger to our community and yet they are taking up precious space in our overcrowded and overstrained prisons and costing us a large amount of money to incarcerate.

HB 919 would create a “graduated sanctions program” for parole and probation and give parole officers options when addressing violations – they can judge if a violation is extreme enough to warrant revocation, or choose another option to allow the parolee to continue on parole.

The bill would prevent sending people to prison for long periods of time for minor rule violations – such as forgetting about a parole meeting, being unable to pay court-imposed fees, or missing their community service hours. Rather than responding to all types of parole violations with a revocation of parole and a return trip to prison, the new system would provide other types of disciplinary actions for parolees whose violations are minor and do not warrant incarceration. A balanced risk-assessment is incorporated into the bill; it directs the parole officer to consider factors such as the individuals’ criminal history, current circumstances of employment, mental health issues, or substance abuse problems. Positive reinforcement techniques are also used, creating an environment that will support parolees to succeed on parole and not return to prison.

In this way, the pilot program would not reduce public safety. The bill ensures that individuals who are on parole and actually commit new crimes are addressed appropriately by the criminal justice system, while allowing those who commit minor violations to stay on parole. These individuals committing minor violations are not a threat to the safety of our communities and incarcerating them does nothing to increase public safety, while at the same time bleeding our

budget.

### **Save Taxpayer Dollars**

Our current system – which allows for revocation for minor violations – is costly and unnecessary. The size of Maryland’s incarcerated population has tripled since 1980, and the number of people under the control of our corrections system is higher than the national average. Maryland spends over \$1.1 billion on our corrections system. The pilot program would ensure that we do not send people to prison who do not belong there and allow our state’s limited resources to be better spent elsewhere.

Because one-third of prison admissions are due to parole violations, preventing these re-admissions to prison for minor violations would guarantee significant cost-savings, while maintaining continued community safety. **According to a 2007 study by the Justice Policy Institute**, Maryland spent approximately \$1,422 per person on parole or probation, while spending \$33,310 per person to incarcerate them. Just by keeping an additional 100 people on parole instead of reincarcerating them, the state could save approximately \$3 million over the course of one year while maintaining public safety.

### **Success in Other States**

This legislation is modeled on bills in Texas and Hawaii. Other states, like Florida, Kansas, Illinois, Michigan, New Jersey, Oklahoma, Oregon, and Wyoming have also implemented parole sanctions systems like the one proposed in HB 919. These states have seen positive results – reducing prison populations and their corrections budgets while maintaining public safety.

For example, by implementing graduated sanctions and other improvements to its community corrections, Kansas cut parole revocations by half in two years and cut the percentage of parolees committing new crimes by a large number as well. In Hawaii, the state’s Opportunity Probation with Enforcement program realized an 85% reduction in missed probation appointments and a 91% decrease in positive drug tests.

Enacting HB 919 and implementing a pilot program in Maryland would ensure similar results in our state.

### **Suggested Amendments**

We respectfully suggest several amendments to the bill.

***Accountability to Implement Statewide:*** One of our biggest concerns with this bill is that does not provide a mechanism to create a statewide program if the pilot program is successful. We suggest that section 6-603 of the bill include a provision requiring the Chief Supervision Officer to provide quarterly reports for four years to a neutral body – such as this Committee or the **Maryland State Commission on Criminal Sentencing**. We recommend that the bill include language stating that if the neutral body finds that the pilot meets some benchmark (for example, reducing the amount of technical violations by parolees, reducing reincarceration rates, or saving the state money), it should then recommend that the pilot program become a permanent statewide program. We find problematic the language placing an expiration date on the pilot program with no mechanism by which to make the program permanent if successful.

***No Short Term Incarceration:*** The ACLU does not consider any type of incarceration, be it prison or jail time, to be a “graduated sanction.” We recommend

that all references to short-term or intermittent incarceration, jail time, or detention be removed from the bill and replaced with intermediates steps such as placement in other supervised settings or the creation of specialized parole violation centers, as has been successfully implemented in New Jersey, to work with the parolee to determine the source of the problem and correct it.

**Add Job Assistance Provision:** We recommend the addition of section 6-301(E)(7) to include job training or assistance to list of positive reinforcements. This will help individuals on parole remain productive members of society, creating a stable environment and resulting in fewer parole violations.

**No Incarceration for Failure to Pay:** We suggest additional language in section 6-303(B)(2) noting that incarceration cannot be a punishment for failure to pay fees and fines. Allowing for incarceration for failure to pay creates a system in which individuals who are too poor to pay go back to prison, but those who are wealthy enough to pay do not.

**Notice of Sanction:** We recommend that in section 6-305(C)(2), the word “immediately” be replaced with “within 24 hours.” This will give the individual time to consult with his or her family or counsel before accepting a sanction. We also recommend that notice be made in person to the parolee.

**Location of Pilot Sites:** We recommend that there be a pilot site in every county. This will give us the most amount of information as to the success or failure of the program.

**Selection of Pilot Participants:** We recommend that the bill include criteria for how the Division of Parole and Probation should chose participants for their program to ensure the widest cross-section possible.

**Eliminate Mentor Provision:** We recommend the provision in section 6-301(E)(6) be cut unless strictly voluntary. Mandating that an individual perform additional duties should not be considered a reward unless the individual chooses this reward.

**Guidance to Assess Risk Level:** We recommend the bill give the Division of Parole and Probation guidance as to how to assess “risk level.”

**Right to Counsel:** We suggest an amendment granting a right to counsel to parolees in parole revocation proceedings, as these hearings determine whether or not an individual remains free or is reincarcerated.

We hope you make the sound fiscal decision and the sound safety decision and support HB 919 and consider these proposed amendments. Thank you for your time.