

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1500

H.P. 1101

House of Representatives, April 20, 2011

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### An Act To Establish Positive Reentry Parole

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Received by the Clerk of the House on April 15, 2011. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative TUTTLE of Sanford.

Cosponsored by Senator WHITTEMORE of Somerset and

Representatives: BEAVERS of South Berwick, BECK of Waterville, BERRY of Bowdoinham, BICKFORD of Auburn, BLODGETT of Augusta, BOLAND of Sanford, BOLDUC of Auburn, BRIGGS of Mexico, BRYANT of Windham, CAIN of Orono, CASAVANT of Biddeford, CHAPMAN of Brooksville, CLARKE of Bath, CORNELL du HOUX of Brunswick, COTTA of China, CUSHING of Hampden, DILL of Old Town, DION of Portland, DRISCOLL of Westbrook, EBERLE of South Portland, GILBERT of Jay, GOODE of Bangor, HARLOW of Portland, HAYES of Buckfield, HOGAN of Old Orchard Beach, INNES of Yarmouth, KAENRATH of South Portland, KNIGHT of Livermore Falls, KRUGER of Thomaston, KUMIEGA of Deer Isle, LAJOIE of Lewiston, LOVEJOY of Portland, MacDONALD of Boothbay, MAZUREK of Rockland, MITCHELL of the Penobscot Nation, MORRISON of South Portland, NELSON of Falmouth, O'BRIEN of Lincolnville, PEOPLES of Westbrook, PETERSON of Rumford, PRESCOTT of Topsham, ROCHELO of Biddeford, ROTUNDO of Lewiston, RUSSELL of Portland, SANBORN of Gorham, SOCTOMAH of the Passamaquoddy Tribe, STRANG BURGESS of Cumberland, STUCKEY of Portland, THERIAULT of Madawaska, VOLK of Scarborough, WAGNER of Lewiston, WELSH of Rockport, Senators: ALFOND of Cumberland, BARTLETT of Cumberland, BRANNIGAN of Cumberland, COLLINS of York, CRAVEN of Androscoggin, HILL of York, HOBBS of York, JACKSON of Aroostook, MASON of Androscoggin, PATRICK of Oxford, SAVIELLO of Franklin, SNOWE-MELLO of Androscoggin, SULLIVAN of York.

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

2 **Sec. 1. 34-A MRSA c. 5, sub-c. 6** is enacted to read:

3 **SUBCHAPTER 6**

4 **POSITIVE REENTRY PAROLE FOR CERTAIN MAINE CRIMINAL**  
5 **CODE PRISONERS**

6 **§5821. Applicability**

7 This subchapter applies to those persons in the custody of the Department of  
8 Corrections pursuant to a sentence imposed under the law in effect on or after May 1,  
9 1976.

10 **§5822. Parole by board**

11 The board may grant a parole from a correctional facility after the expiration of the  
12 term of imprisonment, less deductions for good time and meritorious good time, or after  
13 the parolee's compliance with conditions provided in this subchapter applicable to the  
14 sentence being served. The board may revoke a parole when a condition of the parole is  
15 violated.

16 **1. Duration and conditions of parole.** When the board grants a parole, upon  
17 release the parolee shall serve the unexpired portion of the parolee's sentence under  
18 conditions of custody established pursuant to subsection 2, less deductions for good time  
19 and meritorious good time, unless otherwise indicated by the board.

20 **2. Custody and control.** While on parole, the parolee is under the custody of the  
21 warden or chief administrative officer of the correctional facility from which the parolee  
22 was released but under the immediate supervision of and subject to the rules of the  
23 Division of Probation and Parole and any special conditions of parole imposed by the  
24 board.

25 **§5823. Parole of prisoners; eligibility; process**

26 **1. General provisions regarding eligibility.** A person convicted of one or more  
27 crimes who is incarcerated pursuant to a sentence imposed on or after May 1, 1976 and  
28 who received a definite sentence or aggregate sentence is eligible for parole upon  
29 application if:

30 A. The person's sentence was imprisonment for life or for any term of not less than  
31 25 years and the person has served at least 20 years of that sentence, or the person's  
32 sentence was imprisonment for a term of at least one year to 25 years and the person  
33 served not less than 1/2 of the aggregate sentence or 1/2 of the most recent sentence  
34 imposed by the court, whichever is greater;

1           B. Based on all available information, including reports that the board may require,  
2           the board determines that there is a reasonable probability that the person will live  
3           and remain at liberty without violating the law; and

4           C. The board determines that the parole is not incompatible with the welfare of  
5           society.

6           **2. Administrative release and revocation guidelines.** The board shall develop  
7           administrative release guidelines for use by the board in evaluating applications for parole  
8           as described in section 5824 and shall develop administrative revocation guidelines as  
9           described in section 5825 for use by the board in considering revocation of parole.

10          **3. Parole hearing.** The board shall hold a hearing, which must be video recorded, to  
11          review an application for parole. The board shall use its administrative release guidelines  
12          and any other information it determines relevant in its review. A person seeking parole  
13          must be represented by legal counsel. The board may hear testimony from both the  
14          person seeking parole and any victims; and the board may hear their testimony separately.

15          **4. Parole granted.** If after a hearing under subsection 3 the board grants parole, the  
16          board shall impose any conditions it determines appropriate to mitigate the risk of the  
17          person's again violating the law.

18          **5. Parole denied.** If after a hearing under subsection 3 the board denies parole, a  
19          subsequent review date must be set for 2 years from the date of the denial. The board  
20          shall inform the person of the reasons parole was denied and what the person needs to  
21          accomplish to be considered again for release on parole. A person denied parole may  
22          appeal the denial within 90 days.

23          **§5824. Administrative release guidelines**

24          The board shall develop administrative release guidelines using evidence-based risk  
25          assessment criteria for use by the board in evaluating applications for parole. The  
26          administrative release guidelines must be used to provide the board with consistent and  
27          comprehensive information relevant to risk factors for parolees. The guidelines must  
28          include a matrix of advisory release decision recommendations for different risk levels.  
29          The following provisions govern administrative release guidelines.

30          **1. Factors.** In developing the administrative release guidelines, the board shall  
31          consider factors including, but not limited to:

32          A. The actuarial risk of reoffense. This factor is the central factor for the board in  
33          making its decision related to the timing and conditions of release on parole. Risk  
34          must be assessed using evidence-based actuarial risk assessment tools and  
35          professional judgment;

36          B. Testimony or a written statement of the victim of the crime, a relative of the  
37          victim or a designee of the victim or relative of the victim;

38          C. The person's assessed criminogenic need level;

39          D. The person's program and treatment participation and progress while in custody;

- 1           E. The person's conduct in the correctional facility;
- 2           F. The adequacy of the person's parole plan;
- 3           G. Whether the person while serving the person's sentence has threatened or harassed  
4           the victim or victim's family or has caused the victim or the victim's family to be  
5           threatened or harassed;
- 6           H. Aggravating or mitigating factors from the person's criminal case;
- 7           I. The testimony or written statement of a prospective parole sponsor, employer or  
8           other person who is available to assist the person if released on parole;
- 9           J. Whether the person has previously absconded or escaped or attempted to abscond  
10           or escape while on conditional release, including community supervision;
- 11           K. Whether the person completed or worked toward completing a high school  
12           diploma, a general equivalency degree or a college degree during the period of  
13           incarceration; and
- 14           L. Any factor that the board determines appropriate or necessary.

15           The board may not use the administrative release guidelines for the consideration of  
16           parole for a person who is serving a sentence for committing a crime under Title 17-A,  
17           chapter 11 or 12. The board shall develop specific sex offender administrative release  
18           guidelines to be used to evaluate parole applications for these cases.

19           **2. Structured decision making.** The board shall adopt standards for evaluating  
20           outcomes of its parole decisions and shall conduct its business in a manner that is  
21           accessible to victims, offenders, other criminal justice professionals and the community.

22           **3. Coordination of risk and needs.** The board shall coordinate supervision  
23           conditions and services with assessed risk and need levels as determined in subsection 1.

24           **4. Risk assessment scale.** The board shall develop a risk assessment scale that  
25           includes evidence-based criteria for reducing the risk of recidivism. The board shall  
26           validate the risk assessment scale at least every 5 years or more frequently if the  
27           predictive accuracy, as determined by data collection and analysis by the board, falls  
28           below an acceptable level.

29           **5. Forms.** The board shall develop forms consistent with an effort to record  
30           information required under this section to capture the rationale for the board's decision in  
31           a parole application case. The department shall print the forms. Victim identity and  
32           input must be protected from display on the form and any board hearing report that may  
33           become part of an applicant's or parolee's record.

34           **6. Training.** The board shall seek regular training for its members to ensure that it is  
35           using best practices in parole application evaluation and applying them effectively in  
36           carrying out its duties.

1           **§5825. Administrative revocation guidelines**

2           The board shall develop administrative revocation guidelines that must be used to  
3 evaluate complaints filed for parole revocation. The board shall develop administrative  
4 revocation guidelines using evidence-based risk assessment criteria. The following  
5 provisions govern administrative revocation guidelines.

6           **1. Factors.** In developing administrative revocation guidelines, the board shall  
7 consider factors including, but not limited to:

8           A. A determination by the board that a parolee committed a new crime while on  
9 parole;

10          B. The parolee's actuarial risk of reoffense;

11          C. The seriousness of a violation of a condition of parole, if applicable;

12          D. The parolee's frequency of violations of conditions of parole;

13          E. The parolee's efforts to comply with a previous corrective action plan or other  
14 remediation plan required by the board or by the probation and parole officer;

15          F. The imposition of intermediate sanctions by the probation and parole officer in  
16 response to violations of conditions of parole that may form the basis of the  
17 complaint filed for parole revocation; and

18          G. Whether modification of parole conditions is consistent with public safety and  
19 more appropriate than revocation of parole.

20          **2. Revocation determination for violations of conditions of parole.** In evaluating  
21 complaints filed for parole revocation, the board may not revoke parole for violations of  
22 conditions of parole unless the board determines on the record that appropriate  
23 intermediate sanctions have been used and have been ineffective or that the modification  
24 of conditions of parole or the imposition of intermediate sanctions is not appropriate or  
25 consistent with public safety and the welfare of society;

26           **§5826. Violations of parole**

27           **1. Arrest and detention for violation.** A probation and parole officer may arrest  
28 and charge a parolee with violation of parole, take the parolee into custody and detain the  
29 parolee, pending the issuance of a parole violation warrant. The detention may not  
30 extend beyond the next business day, and, if a warrant is not issued in that time, the  
31 parolee must be released from arrest and detention. A parolee arrested and detained does  
32 not have a right of action against the probation and parole officer or any other persons  
33 because of that arrest and detention.

34           **2. Issuance of warrant for violation; board action.** When a parolee violates a  
35 condition of parole or violates the law, a warrant may be issued for the parolee's arrest. A  
36 probation and parole officer, or any other law enforcement officer within the State  
37 authorized to make arrests, may arrest the parolee on the warrant and return the parolee to  
38 the correctional facility from which the parolee was paroled. At its next meeting at that  
39 correctional facility, the board shall hold a hearing. The parolee is entitled to appear and  
40 be heard. If the board, after hearing, finds that the parolee has violated parole or the law,

1 the board may revoke the parole, set the amount of the unexpired portion of the sentence  
2 the parolee must serve before the parolee is again eligible for a parole hearing before the  
3 board and remand the parolee to the correctional facility from which the parolee was  
4 paroled.

5 **3. Forfeits deductions.** Upon revocation of a person's parole by the board under  
6 subsection 2, the person forfeits any deductions for good time and meritorious good time  
7 earned while on parole.

8 **4. May earn deductions.** While a person is serving the unexpired portion of a  
9 sentence after parole has been revoked under subsection 2, the person may earn  
10 deductions for good time and meritorious good time.

11 **5. Tolling of sentence.** Whenever a warrant is issued under this section for the  
12 arrest of a parolee, the running of the parolee's sentence is tolled and remains tolled until  
13 the parolee is returned to the correctional facility from which the parolee was paroled.  
14 Tolling of the running of the sentence must include any time served prior to such return,  
15 after conviction for a crime committed while on parole.

16 In the event of the withdrawal of the warrant, or in the event that the board at the hearing  
17 on the alleged violation finds that the parolee did not violate the conditions of parole or  
18 the law, the parolee must be credited with the time lost by the tolling of the running of the  
19 parolee's sentence.

20 **§5827. Sentence for violation of law by parolee**

21 A parolee who violates the law while on parole, when the violation is punishable by  
22 imprisonment for one year or more, and who is sentenced to the custody of the  
23 department shall serve the 2nd sentence beginning on the date of termination of the first  
24 sentence, unless the first sentence is otherwise terminated by the board.

25 **§5828. Discharge from parole**

26 A parolee who faithfully satisfies all the conditions of parole and completes the  
27 parolee's sentence is entitled to a certificate of discharge to be issued by the warden or  
28 chief administrative officer of the correctional facility to which the parolee was  
29 committed. If it appears to the board that a parolee is no longer in need of supervision,  
30 the board may order the chief administrative officer or warden of the correctional facility  
31 from which the parolee was paroled to issue the parolee a certificate of discharge.

32 **§5829. Collection and analysis of data**

33 **1. Outcome data and analysis.** The board shall develop and implement a process to  
34 collect and analyze data related to the basis for the outcomes of the board's  
35 determinations or decisions for granting, revoking or denying parole. Any data related to  
36 victim identification or victim input that is identifiable to the person convicted or the  
37 person's case must be maintained but kept confidential by the board and may be released  
38 only to other government agencies, pursuant to a nondisclosure agreement, for the  
39 purposes of analysis and reporting only.

